1871

SUPREME COURT OF THE UNITED STATES.

No. 162.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. ASA CUTLER, JOHN UNDERHILL, Jr., AND ARZA UNDERHILL, PL'FFS IN ER.,

vs.

EDGAR C. DIBBLE, COUNTY JUDGE, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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UNITED STATES OF AMERICA, *ss:*

To Edgar C. Dibble:

[SEAL.] You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at a term thereof to be held in Washington, on the first Monday of December next, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of New York, at Batavia, in said State, wherein the People of the State of New York upon the relation of Asa Cutler, John Underhill, jr., and Arza Underhill, are the plaintiffs in error, and you, as county judge of the county of Genesee, are defendant in error, to show cause, if any there be, why the judgment of the court of appeals of the said State of New York, in said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Hiram Denio, chief judge of the said court of appeals of the State of New York, this 18th day of November, in the year of our Lord 1857.

H. DENIO.

I hereby admit service of the above citation this 21st day of November, 1857.

EDGAR C. DIBBLE,
Late Judge of Genesee County.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Joshua L. Brown, of Batavia, in said district, being duly sworn, saith that he did, on the 21st day of November instant, at Batavia aforesaid, personally deliver to, and leave with, Edgar C. Dibble, esquire, the defendant in error within named, a true copy of the within original citation, at the same time showing him the within original, and thereupon the said defendant in error, who is personally known to deponent, did with his own hands, and in deponent's presence, write and sign the admission of service, at the foot of the said within original citation; and further deponent saith not.

JOSHUA L. BROWN.

Subscribed and sworn to before me, at the city of Buffalo, in said district, this 25th day of November, 1857.

N. K. HALL,
District Judge of the U. S. for the Northern District of New York.

[Endorsed:] Supreme Court of the United States. The Peo-

ple of the State of New York ex relatione Asa Cutler, John Underhill, jr., and Arza Underhill, plaintiff in error, vs. Edgar C. Dibble, county judge of Genesee county, defendant in error. Citation. Henry I. Glowacki, att'y for plffs. in error.

SUPREME COURT OF THE UNITED STATES:

THE PEOPLE OF THE STATE OF NEW YORK ex relatione Asa Cutler, Arza Underhill, and John Underhill, junior, plaintiffs in error,

vs.

Edgar C. Dibble, county judge of Genesee county, defendant in error.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Joshua L. Brown, of Batavia, in said district, being duly sworn, saith that he did, on the 21st day of November instant, leave the writ of error issued and allowed herein upon the defendant in error, by lodging a true copy thereof in the office of the clerk of the supreme court of the State of New York, at Batavia aforesaid, for the said defendant in error, pursuant to the statute of the United States in such case made and provided; and further saith not.

JOSHUA L. BROWN.

Subscribed and sworn to this 25th day of November, 1857, before me, at the city of Buffalo, in said district.

N. K. HALL,
District Judge of the U. S. for the Northern District of New York.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of New York, greeting:

Because in the record and proceedings, and also in the rendition of a judgment by the court of appeals of the State of New York, in a plaint which was lately in said last-mentioned court, before the judges thereof, between the People of the State of New York upon the relation of Asa Cutler, John Underhill, jr., and Arza Underhill, appellants, and Edgar C. Dibble, county judge of the county of Genesee, respondent; the record of which said proceedings and judgment of the said court of appeals, together with the judgment of the same court in the premises, hath by the said court of appeals been remitted to and now remains in the said supreme court before you, as it is said manifest error hath happened, to the great damage of the said Asa Cutler, John Underhill, jr., and Arza Underhill,

as by their complaint appears; and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given by the said court of appeals, and the same, with the record and proceedings aforesaid, be remitted to and remain in the said supreme court before you, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and, according to the law and custom of the United States, ought to be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 5th day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

AUGS. A. BOYCE,
Clerk of the Circuit Court of the United States for the Northern District of New York.

HENRY I. GLOWACKI,
Attorney for Plaintiffs in Error.

STATE OF NEW YORK, *ss:*

To the Justices of the Supreme Court of the United States:

The answer of the justices of the supreme court of the State of New York to the within writ of error, appears by the schedule hereunto annexed, containing a transcript of the record and proceedings whereof mention is within made, which we certify, under the seal of our said court, to the Justices of the Supreme Court of the United States within mentioned, at the day and place within contained, as within we are commanded. [SEAL.]

By the court.

H. W. HASCALL, *Clerk.*

STATE OF NEW YORK, *ss:*

The within writ of error allowed, and citation thereon signed, this 18th day of November, 1857.

H. DENIO,
Chief Judge of the Court of Appeals.

[Endorsed:] Supreme Court of the United States. The People of the State of New York ex relatione Asa Cutler, John Under-

hill, jr., and Arza Underhill, plaintiffs in error, vs. Edgar C. Dibble, county judge of Genesee county, defendant in error. Writ of error. Henry I. Glowacki, att'y for plffs. in error. Filed Nov. 21, 1857.

"*Schedule.*"

To the judges of the court of appeals:

GENESEE COUNTY, *ss:*

The answer of the justices of the supreme court to the within appeal.

By the court.

M. G. SOPER, *Clerk.*

GENESEE, CLERK'S OFFICE, *ss:*

I certify that I have compared the within copy of notice of appeal and the annexed copy of judgment roll with the respective originals thereof on file in this office, and that said copies are respectively correct transcripts therefrom, and of the whole of said respective originals.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of the supreme court for said county the 18th day of October, 1854.

M. G. SOPER, *Clerk.*

SUPREME COURT.

THE PEOPLE EX RELATIONE ASA CUTLER, Arza Underhill, and John Underhill, junior,
vs.
Edgar C. Dibble, county judge of Genesee county.

Take notice that the above-named relators have appealed and do appeal to the court of appeals from the judgment entered in this cause, the record whereof was filed on the 18th day of October instant. Dated October 18th, 1854.

Yours, &c.

HENRY I. GLOWACKI,
Attorney for Relators, the Appellants.

To the Clerk of Genesee county.

To Wakeman & Bryan, esqrs., atty's for the county judge, the respondent.

Filed October 18th, 1854.

1574

IN THE SUPREME COURT.

THE PEOPLE EX REL. ASA CUTLER, Arza Underhill, and John Underhill, jr.,
vs.
Edgar C. Dibble, county judge of Genesee.

Case.

H. I. Glowacki, attorney for relators. Wakeman & Bryan, att'ys for defendant.

Pleas in the supreme court of the State of New York before the justices thereof, on the first Monday of November, in the year of our Lord one thousand eight hundred and fifty-three. Witness Richard P. Marvin, esquire, justice of the supreme court.

M. G. SOPER, *Clerk.*

STATE OF NEW YORK,
Genesee County, ss:

The People of the State of New York sent to Edgar C. Dibble, county judge of the county of Genesee, their writ close in these words, that is to say:

The People of the State of New York to Edgar C. Dibble, esquire, [L. S.] county judge of the county of Genesee, greeting:

Whereas upon a certain complaint and the proceedings thereon instituted and taken before you by the district attorney of the county of Genesee against Asa Cutler, John Underhill, jr., and Arza Underhill, upon a pretence that they were intruders upon a certain tract of land in said county, alleged to be owned and occupied by the Seneca Nation of Indians; it was proved and did appear before you that the said Seneca Nation of Indians had theretofore duly granted and conveyed the said tract of land in question to Thomas Ludlow Ogden and Joseph Fellows, pursuant to the constitution and laws of the land; that the national government of the said Seneca Nation of Indians exercised no territorial jurisdiction over the said tract of land; that the said Seneca Nation, in its collective and national capacity, made no claim to the title, possession, or occupancy of the said tract of land; that the only actual Indian occupation of any part of said tract of land was by a band of Indians, called and known by the name of the Tonawanda Band, which said band alone claimed the title and right of occupancy of said tract of land, and were alone contesting the question of the right of possession thereof with a large number of persons and

families (other than Indians) who were in the actual possession and occupation of several distinct lots, parcels and portions thereof, claiming title to their respective possessions; that such contention about the right of possession was a matter of said band alone, and not of the said nation; that said Asa Cutler, John Underhill, jr., and Arza Underhill were severally in the actual possession and occupation of several distinct lots and parcels of said tract of land, claiming title thereto founded upon written instruments and adversely to the said Seneca Nation, and that they and each of them had been in such actual possession claiming title as aforesaid for more than seven years last past; that the said lots by them respectively possessed were in a territory upon said tract which is entirely occupied by white settlers whose possessions are contiguous; yet you, notwithstanding certain objections to your want of jurisdiction in the premises interposed by the said Asa Cutler, John Underhill, jr., and Arza Underhill, and notwithstanding that they and each of them protested against the assumption of jurisdiction by you to try and determine their title to the premises by them respectively possessed as aforesaid in a summary manner without the interventiou of a jury, and not according to the course of the common law, did proceed to try and adjudicate upon their said titles in a summary mode without the intervention of a jury, and not according to the course of the common law, and did adjudge and determine their said titles to be defective and invalid, and upon such adjudication and determination against their said titles did further adjudge and determine to issue your warrant under your hand and seal, directed to the sheriff of said county, directing him, within ten days after the receipt thereof, to remove the said Asa Cutler, John Underhill, jr., and Arza Underhill, with their families, from the said tract of land and from their said respective possessions thereon, pursuant to the application of the said district attorney in the premises, in which said proceedings, adjudication, and determination manifest error hath intervened, to the great injury of the said Asa Cutler, John Underhill, jr., and Arza Underhill, as by their complaint we are informed; and we being willing, for the causes aforesaid, and for certain other causes to be certified of such proceedings, adjudication, and determination, if any such were had before you, do command and strictly enjoin you that you certify those proceedings, adjudication, and determination, with all things touching or concerning the same, (and particularly in respect to all the matters alleged in this our writ,) as the same were presented to or remain before you, unto our justices of our supreme court of our said State, at the court-house in Buffalo, on the first Monday of November next, under your hand as fully and amply as they were exhibited to or remain before you, (and particularly in respect to all the matters herein alleged,) so that our said supreme court may further cause to be done thereupon what of right and, according to the constitution and laws of our

said State, ought to be done, and have you then there this our writ.

Witness Richard P. Marvin, esquire, one of the justices of our said supreme court, at the Court-House, in the city of Buffalo, the 29th day of August, 1853.

M. G. SOPER, *Clerk.*

HENRY I. GLOWACKI, *Attorney.*

And now, on the day and at the place in the said writ contained, before the said supreme court, came the relators aforesaid by their attorney aforesaid, and the judge aforesaid, to wit, Edgar C. Dibble, now here, makes return to the said writ, in the words and figures following, that is to say:

To the justices of the supreme court of the State of New York:

In obedience to the command of the annexed writ of certiorari, I, Edgar C. Dibble, county judge of the county of Genesee, do hereby certify and make return—

That, on the nineteenth day of February, 1853, the district attorney of the county of Genesee did make complaint to me in writing, as follows, to wit:

To the county judge of the county of Genesee:

Pursuant to the provisions of the act of the people of the State of New York, represented in Senate and Assembly, entitled "An act respecting intrusions on Indian lands," passed March 31, 1821, I, the undersigned, district attorney of the county of Genesee, make complaint to you that Asa Cutler, John Underhill, and Arza Underhill, with their families, and each and every of whom are persons other than Indians, have settled and reside upon certain lands in the county of Genesee, known and distinguished as the Tonawanda Reservation and as the Twelve Thousand Eight Hundred Acre Tract, and that such reservation or tract is owned and occupied by the Seneca Nation of Indians, who reside on said reservation or tract, and who are also distinguished and known as the Tonawanda Band of the Seneca Nation of Indians, and I complain that the said settlement and residence by the said persons and families other than Indians is in violation of the provisions of the act aforesaid, and I respectfully demand that a warrant be issued pursuant to the provisions of the said statute for their removal as intruders.

February 19th, 1853.

SETH WAKEMAN,
District Attorney of Genesee County.

And I further certify and return that I did thereupon issue a notice in the words and figures following, that is to say: "Where-

as on the 19th day of February, 1853, Seth Wakeman, district attorney of the county of Genesee, did make complaint to me that you, Asa Cutler, John Underhill, and Arza Underhill, with your families, each and every of whom are persons other than Indians, have settled and do now reside upon certain lands in the county of Genesee, known and distinguished as the Tonawanda Reservation and as the Twelve Thousand Eight Hundred Acre Tract, and that such reservation or tract is owned and occupied by the Seneca Nation of Indians, who reside on said reservation or tract, and who are also distinguished and known as the Tonawanda Band of the Seneca Nation of Indians, and that the said settlement and residence by you and your families, and each and every of you, is in violation of the provisions of the act aforesaid, and whereas the said district attorney demands that a warrant be issued by me pursuant to the provisions of the said act for the removal of you and each of you as intruders: Now, therefore, I do direct and notify you and each of you to be and appear before me, the county judge of Genesee county, at my office in Batavia, on the 11th day of March next, at 1 o'clock p. m., at which time and place I shall receive and hear such proofs and allegations as may be offered before me, in support of said complaint, and also shall give you and each of you leave to controvert and examine such proofs and allegations, and to show cause against the issuing of the warrant so as aforesaid demanded.

February 19, 1853.

EDGAR C. DIBBLE,
County Judge of Genesee County."

That said notice was endorsed as follows: "I order and direct that a copy of the within notice be served on each of the within named persons complained of as intruders, at least ten days before the 11th day of March, 1853.

EDGAR C. DIBBLE,
County Judge of Genesee County."

And I do further certify and return that such notice was duly returned to me, with an affidavit on the back thereof, of which the following is a copy:

"GENESEE COUNTY, *ss:*

Reuben S. Lusk, of Batavia, in said county, being duly sworn, says that on the 28th day of February, 1853, he served the within notice personally on Asa Cutler, Arza Underhill, and John Underhill, junior, by delivering to each of them personally a copy of the same, at the town of Alabama, in said county.

R. S. LUSK.

Subscribed and sworn to this the 7th day of March, 1853, before me.

A. COWDIN,
Justice of the Peace for said County."

Which to me was satisfactory evidence of such service.

And I further certify and return that the said Asa Cutler, Arza Underhill, and John Underhill, junior, personally and by counsel, and the district attorney of said county, did, on the said eleventh day of March, appear before me, and desired an adjournment of said proceedings; and mutually consenting thereto, I did adjourn the same until the sixth day of April then next, at my office, at which time the said parties again appeared before me personally and by counsel, and the said Asa Cutler, Arza Underhill, and John Underhill, junior, by their counsel submitted the following written objections, to wit:

Before the county judge of Genesee county.

In the matter of the complaint of the District Attorney of the county of Genesee,
ag'st
Asa Cutler, Arza Underhill, and John Underhill, junior.

The above-named Asa Cutler, Arza Underhill, and John Underhill, junior, severally object and say, and each for himself saith, that the county judge hath no jurisdiction to proceed upon the said complaint, and ought not to take cognizance thereof for want of jurisdiction, because they severally say, and each for himself saith, that for more than seven years last past he hath continually been and still is in the actual possession and occupation of certain lands and tenements situate upon the said 12,800 acre tract, claiming title thereto founded upon a written instrument, adversely to the said Seneca Nation of Indians, and by the constitution and the law of the land are entitled to a trial by jury, according to the course of the common law, to determine the validity of their title to, and and right of possession of the premises so by them respectively actually possessed as aforesaid, without which trial by jury they cannot be lawfully removed from their said respective possessions, and inasmuch as the said act passed March 31, 1821, in the complaint mentioned does not provide for such trial by jury, the same is unconstitutional and void, wherefore the county judge hath no jurisdiction to try and determine in a summary way, not according to the course of the common law and without the finding of a jury, the validity of their said title and right of possession, or to remove them from their said several possessions.

J. L. BROWN, *Counsel for Defts.*
G. W. CLINTON, *of Counsel for Defts.*

And I further certify and return that after hearing the arguments of the respective counsel for the parties, I did thereupon overrule the said objections of the said defendants, and did declare my determination to proceed upon said complaint. And thereupon the said Asa Cutler, Arza Underhill, and John Underhill, junior, without waiving their aforesaid objections, or any of them, but insisting upon all and every of the said objections interposed as aforesaid, put in the following answer to the said complaint, viz:

And then the said Asa Cutler, Arza Underhill, and John Underhill, junior, not waiving their aforesaid objections, but insisting on the same, each severally answers the said complaint and severally deny that the said tract of 12,800 acres of land, or any part thereof, is owned or occupied by the said Seneca Nation, and to the contrary thereof they each severally allege that in and by and under and by virtue of a certain treaty made between the United States of America and the said Seneca Nation of Indians, bearing date at Buffalo Creek, in the State of New York, on the 20th day of May, 1842, and the indenture set forth in the same treaty the said Seneca Nation of Indians did grant, release, and confirm unto Thomas Ludlow Ogden and Joseph Fellows, in said treaty named, and to their heirs and assigns in joint tenancy, the whole of the said tract of 12,800 acres, together with certain other lands, and all the right and interest therein of the said Seneca Nation of Indians, which grant was afterwards duly confirmed by the commonwealth of Massachusetts, pursuant to the provisions of the mutual agreement or act of cession made and entered into by and between the said commonwealth and the State of New York, at Hartford, in the State of Connecticut, on the 16th day of December, 1786; that the whole amount of the consideration to be paid by said Ogden and Fellows, for the grant aforesaid, hath long since been ascertained and paid, and the amount to be paid to each individual Indian, for improvements on the said lands thus granted, hath been in like manner ascertained, determined, awarded, and paid, pursuant to the provisions of the treaty and indenture aforesaid; that said Ogden died in December, 1844; that these defendants are severally and respectively in the actual possession and occupation of several distinct lots and parcels of the said 12,800 acre tract claiming title thereto founded upon written instruments from the said Joseph Fellows, and adversely to the said Seneca Nation; that they have severally so been in such actual possession of said lots or parcels claiming title as aforesaid for more than seven years last past, and that the premises so by them respectively occupied are respectively of the value of more than $2,500, and that their respective possessions and interests aforesaid are respectively of the value of more than $2,500, and they severally object and insist that the county judge hath no lawful power or authority to determine their respective rights in the premises, or to turn them out

of their said respective possessions by any summary proceeding whatever, and they severally protest against all and every proceeding had or to be had by or before the county judge upon the above complaint, and utterly refuse to consent that their respective rights to the land so possessed by them respectively be in any manner determined by the county judge.

J. L. BROWN, *Counsel for Defts.*
G. W. CLINTON, *of Counsel for Defts.*

And I further certify and return that I did thereupon proceed to the hearing of said matter. And it was conceded and admitted, and I therefore so found, that the defendants, Asa Cutler, Arza Underhill, and John Underhill, junior, and each of them, reside upon the 12,800 acre tract, called the Tonawanda reservation, with their families, and that they have resided there for seven years last past. That during all this time they have severally been in the actual possession of distinct lots or parcels of land upon this tract, claiming title thereto from Joseph Fellows, as survivor of Thomas L. Ogden, who died in 1844, founding such claim of title upon written instruments, and that such possession has always been adverse to the Seneca Nation of Indians; that the premises occupied by Cutler were originally forest lands, and have been improved, enclosed, and cultivated by him; that in respect to the possession of the Underhills, a portion of the lands possessed by them had been improved by Indians prior to their entering into possession, and the residue was then forest lands, and have since been improved and cultivated by them.

That the possessions of these defendants are in a territory upon said tract which is entirely occupied by white settlers whose possessions are contiguous, and that there has been no actual occupation thereof by the Indians for the last five years, except as is hereinafter stated.

The parties stipulated that so much of the evidence as was taken before the honorable Horace U. Soper, late county judge, upon proceedings for the removal of John McDermid, be read in evidence in this proceeding with like effect as though the witnesses were here produced and examined, subject to all the exceptions and objections taken thereto before said county judge and such others as to relevancy as counsel may make, the same was delivered to me and received as read, and a copy is hereunto annexed, marked schedule "A."

It was further admitted, and I therefore so found, that the same state of things has continued and now exists as did exist at the time of taking such testimony substantially in respect to the occupation of the premises and customs of the Indians and taxation of the settlers.

That since the taking of such testimony there has been no cessa-

tion of the controversy between the Indians and settlers up to the present time.

That the Indians have from time to time cut timber from the forest lands, and that there is a small Indian improvement upon the Cutler lot, not fenced in by Cutler, and of which he never had possession, and that the cattle of individual Indians have run in the woods.

That there are in the vicinity of the said white settlers two or three small Indians improvements in the occupation of individual Indians. That the defendants are not Indians, but are persons other than missionaries.

And that one of the Indians, Thomas Black, in his lifetime, and since his death his heirs occupied the improved lands on the Underhill lots, and since the Underhills went into possession of the other part of such lots; that the Underhills went on to the Indian improvements thereon, and the heirs of Thomas Black molested them in their occupation, and the Underhills thereupon agreed to pay and have since paid them the sum of twenty-five dollars or thereabouts per year for the use of the Indian improvements and to be left unmolested.

It was also stipulated and agreed by and between said parties that the documents hereto annexed, and marked schedule "B," given in evidence in the case of John Blacksmith ag'st Joseph Fellows and Robert Kendall upon the defence, be read in evidence in this proceeding with the like effect as the originals would have if produced, proved and read, with the letter of Thomas C. Love as appraiser, and the appointment of Horace Gay as arbitrator, and the instructions accompanying the same, with the supplementary award in the possession of defendants' counsel, and the statement of the Secretary of War accompanying the filing, a copy of which is annexed to schedule "B," and which it is admitted is endorsed upon the original award; and that in July, 1851, Benjamin Pringle was appointed as the agent of the Executive of the United States, as appears by paper produced, a copy of which is annexed to schedule "B," and that said Pringle as such agent received from the United States Government $15,018 36, gave the Indians notice thereof, and they refusing to receive it, the money still remains in his hands for them.

Thereupon, at the request of the respective parties, said proceedings were further adjourned until the twenty-third day of April, 1853, at my office aforesaid, at which time and place the said parties again appeared by counsel, and mutually conceded that the award should be evidence as to the conduct of the Indians, and as to what the arbitrators did, and not subject to exception in that particular. The counsel for the settlers objected to all the evidence having a tendency to impeach the treaty, upon the ground that the people are estopped thereby, and also as to the competency of the

Indians as witnesses, upon the ground that this proceeding is for their immediate benefit.

Counsel for the defendants further objected to all such portions of the evidence as have a tendency to impeach the treaty for fraud, want of due execution, want of power in the nation to cede and convey the Tonawanda reservation.

Thomas C. Love testified that he was one of the arbitrators appointed under the treaty of 1842, and signed an award he thinks in triplicate. That the award was drawn by James M. Smith, attorney of the firm of Smith & Rogers, who professed to be the counsel of Messrs. Fellows and Ogden.

That before agreeing to the award in its present shape, witness objected to making the provisions for the Tonawandas as finally contained in the award.

Mr. Cook came to my house and asked if I would consent to certain things in the award as to the Tonawandas if he would consent to pay the $75,000 for the unimproved lands. Mr. Fellows insisted that a certain amount of the improvement fund in the award should be set apart to the Tonawandas in a gross sum, and it was so done.

Upon his cross-examination, he further stated that his opinion was that if the lands of the Tonawandas were not measured and appraised the arbitrators could not award them a gross sum. Witness insisted that the whole of the sum should go to the Buffalos. Mr. Fellows said there should be a part of the fund set apart to the Tonawandas; then witness said he did see not how the arbitrators could do that without defrauding the other Indians by giving the Tonawanda Indians too much or too little. Mr. Fellows did not name the sum to be given to the Tonawandas.

Upon the direct examination of the witness resumed, he says he never made any examination of the value of the improvements upon the Tonawanda reservation, or how much or how little there were of them, and never knew whether there were 30,000 or 10,000 acres. We never ascertained how many of the Tonawanda Indians had improvements. Witness wrote a letter to the Secretary of War, bearing date January 2, 1849, which is produced and read, and a copy is annexed to schedule "B."

It was admitted by the parties that the annexed paper, bearing date February 22, 1851, and annexed to schedule "B," was a copy of the endorsement made by the Secretary of War upon the award of Gay and Cook.

It was also admitted that the paper bearing date June 26, 1851, annexed to schedule "B," was a copy of the appointment of Benjamin Pringle as agent, and his instructions in relation to such agency.

A paper bearing date February 7, 1849, purporting to be the appointment of Horace Gay, arbitrator, in place of Thomas C. Love, and the instructions to him from the honorable William L. Marcy,

was produced and by consent read in evidence, a copy of which is also annexed to schedule "B."

The counsel for defendants also read from the printed case of Blacksmith against Fellows and Kendall, page 22, the treaty, and also from the same case the deed from the head men of the Seneca Nation to Messrs. Ogden and Fellows, and also the award of Ira Cook and Thomas C. Love, commencing at page 38 of same case, copies of which are hereunto annexed, marked schedule "B."

Counsel mutually admitted and I so found that after the making of the award in 1844, up to the time of the making of the award signed by Horace Gay, some Indians had made new improvements upon the tract; that there had also been during the same time some transfers of improvements among the Indians by death or otherwise.

And I further certify and return that it did not appear and was not proved before me that the said Seneca Nation of Indians had theretofore duly granted and conveyed the said tract of land in question to Thomas Ludlow Ogden and Joseph Fellows, pursuant to the constitution and laws of the land, or in any other or different way than as is hereinbefore stated.

That it was proved and did appear, as I concluded from the evidence as a question of law, that the national government of the Seneca Nation of Indians did exercise territorial jurisdiction over the said tract of land, inasmuch as it appeared that the Tonawanda Band of Indians were as much a part of the Seneca Nation of Indians as any other portion of said nation were a part. And that the said reservation had been and was then occupied, held, and governed by the Seneca Nation of Indians in the same manner as it has been held, governed, and occupied from time immemorial by the Tonawanda Indians; and so the Seneca Nation of Indians in its collective and national capacity I did understand claimed title to the possession and occupation of the said tract of land. That the actual Indian occupation of said tract of land is by the band of Indians called and known by the name of the Tonawanda Band of Indians, who are a part of the Seneca Nation, and who alone are contesting the question of the right of possession thereof, with said defendants and their families, who are in the occupation of lots upon said tract of land as is hereinbefore stated.

And I further certify and return that this is all the evidence given and all the admissions made in said proceeding, and that the counsel, after such evidence given, admissions made, and proceedings, summed up the evidence, and submitted the whole of said matter to me, and I did thereupon, on the first day of August, 1853, adjudge and determine that the matters contained in said complaint are true as is therein alleged, and to issue my warrant, under my hand and seal, directed to the sheriff of the county of Genesee, commanding him, within ten days after the receipt thereof, to remove all the said persons so complained of as aforesaid with their

families from the said tract of land, designated in said complaint, and do herewith certify and return a copy of my opinion as I am commanded in said writ, which is hereto annexed, marked —. All which is respectfully submitted.

Dated January 3, 1854.

EDGAR C. DIBBLE,
County Judge of Genesee County.

Schedule "A."

Before H. U. Soper, county judge of Genesee county.

In the matter of the Complaint of District Attorney
vs.
JOHN MCDERMID.

July 28th, 1849.

Joseph A. Sandford, sworn for prosecution—Says he is an Indian. I belong to the Tonawanda Band and the Seneca Nation. The Tonawanda Band are a people called Indians living on the tract called the Tonawanda Reservation, in the town of Alabama, Genesee county. * * * * *

John Blacksmith.—I am an Indian. I belong to the Tonawanda Band of Indians and Seneca Nation; about 680 Indians compose that band; they reside on Tonawanda creek; their place of residence is known as the 12,800 acre tract in the county of Genesee. I am a chief; they have occupied the tract as far as he knows, about three generations. I was born on the Tonawanda reservation; I am about 65 or 66 years old. They have been governed and regulated by Indian laws and customs during all this time; upwards of twenty years ago they had improvements, and made improvements and planted, and they used their wild lands to get the stuff they wanted. There were roads over the reservation; now they have larger improvements and more roads; they have never given up any portion of the present reservation. I was present at a treaty made by Ogden and Fellows with the Seneca Nation in 1842, at Buffalo Creek; all of the Tonawanda chiefs were there; there were 13; not one of them signed the deed to Fellows; they said they would not sign, that they were not willing to sell their lands. Ogden and Fellows were both there; none of the Tonawanda Band signed the deed. So far as he recollects, when Indians sell land, it must be by the unanimous consent of all the chiefs, and if any part or portion dissent, it is not a contract. The Indians not living on a reservation have no right to convey that reservation without the consent of those living on it. By the customs of Indians, they each have separate improvements owned by individuals; this has been the custom ever since Indians began to

make improvements; they have all that the fence encloses or that he has worked, all that they improve. The Indian chiefs have no power to convey an improvement if the owner of the improvement dissents. Formerly, the Indians used the wild land for hunting grounds; now they are making improvements upon it. Previous to 1836 and 1837, they got their wood and staves on their wild lands; now they get what timber they want in their wild lands or woods.

Cross-examined.—There are white men residing on the reservation; I do not know the number; they reside on the wild lands; they have made improvements on the wild lands; they cultivate the land they have improved; they have fenced their lands, they have built houses. I have not seen any barns that they have built; some have been there four or five years, or within that time, I don't know how long, probably four or five years. The Tonawanda Band owns this reservation so far as the disposition of it is concerned. The Seneca Nation, in their negotiation, act by the chiefs in council. The custom has been for the Seneca Nation to act by the chiefs assembled in council. I think there were about 82 chiefs of the Seneca Nation in 1838; I do not know how many there were in 1842; a good many have died, and some new ones made. The Tonawanda chiefs have the power of disposing of the Tonawanda reservation.

Direct examination resumed.—The white men on the reservation came there against the wishes of the Indians, and are anxious to have them off. The Indians of Tonawanda have never given up or surrendered the reservation to the white men there or to any other persons in pursuance of any treaty, the white men have seized some of the Indian improvements, and still hold them. The Indians at Tonawanda have never received any pay for their lands, and have refused to receive it. Each individual band manages its own affairs.

Cross-examined.—The chiefs of the Seneca Nation have not had a general council since 1842, except in this way—that the chiefs of Tonawanda have sent to Cattaraugus to draw their annuities. I went to Cattaraugus to meet chiefs in relation to annuities, the last time two years ago, and the other in 1846. I think the other chiefs, not those of Tonawanda, took part of the interest money on the $75,000 paid in to Government.

Jemmy Johnson for the prosecution.—I am a true Indian. I belong to the Tonawanda Band and Seneca Nation. I am 77 years old; I am a chief; I have lived on Tonawanda reservation since I was very small; the Indians have never surrendered up the Tonawanda reservation. He has heard or thinks it is about three generations they have held it; he thinks, however, that they have had it since God made the world, or that part of it. The Tonawanda Indians have never consented to any treaty giving up the reservation. I think they have had wagon roads on it in the neighbor-

hood of thirty years probably; I think they have had barns and houses within thirty years; I think it is beyond forty years since they began to cultivate the land; now they cultivate more, have more strength, make more houses than they formerly did; they used the wild lands 15 years since; they got their materials, such as making rails, on the wild lands; they now use their wild lands for various purposes, such as rails, bark, timber, and other purposes. The only difference in the occupation now from what it was 15 years since is, that when an Indian makes a small improvement, it is his, calls it his claim; formerly it was not so; they lived in separate huts 15 years ago, and cultivated separate pieces of ground. I always had crops, that is the way that I live, and they belong to me and my family, and the house I put up belonged to me, was my own house; I had improvements there. The custom and usage among the Indians is, that it is no sale of land when the band living on the land dissents; during my life the Seneca Nation has been divided into different bands, each band has a right to manage its local affairs. I am the successor of Red Jacket. Blacksmith is the chief or head sachem of the Seneca Nation. The white men living on the reservation came there against the consent of the Indians.

Cross-examined.—The Tonawanda band occupy the Tonawanda reservation; they have owned it since God made the world, they always did own it. The chiefs of Tonawanda can convey this reservation, it is discretionary with them. The chiefs alone exercise any territorial jurisdiction over the reservation; they are the only ones. The chiefs of the Seneca Nation in council do not exercise any territorial jurisdiction over Tonawanda reservation. There are about 80 chiefs of the Seneca Nation now; I think there are about 17 chiefs of the Tonawanda band; I think the greatest number of the Seneca Nation reside on the Cattaraugus reservation; I do not know the number; I think there are a good many on the Allegany reservation. I was present at the treaty of 1826, and '38 and '42. These are the only treaties at which I have been present when the Indians sold lands. I know the chiefs on the Genesee river. The treaty of 1826 was held at Buffalo. I know Jesse Tiffany, now living, who lived on the Conewagus reservation, Tall Chief on Squawkie Hill, Shongo at Caneadea, James Hudson at Canadea, Singo-wah at Wiscoy. I had been on one of those reservations, and know that the Indians had individual improvements. I think it probable that the Indians approved of the sale of these reservations, and signed; I think I know that Tiffany, Shongo, and Hudson signed, I did not see them. Very often the Indians have told the white men that it was against their wishes to have them live on the lands, can't tell their names, but those living close to the improvements.

Direct examination resumed.—Public notice was given in the court-house at the time of sale that the Indians would not give up

possession of their lands; that was five years since; and a like notice was given at Buffalo when a sale was made there. The Ogden Co. have sent surveyors on to the reservation, and the Indians would not let them survey.

Seneca White.—I am an Indian. I am 66 years old; I belong to the Seneca Nation; I was born on the Buffalo reservation; since I can recollect the Nation has been divided into bands, living on different reservations. As I understand it the custom is the Nation cannot sell a reservation so long as those living on the reservation dissent. So far as I understand it, those living on each reservation manage their own concerns, their local affairs. Before 1842 I never knew that there was any voting in a council, the chiefs for each reservation must assent to any matter in order to make it the act of the Nation. Before the revolution up in Cattaraugus I was a chief.

Cross-examined.—The chiefs of each band acted separately, and if they concurred they came together and it was considered unanimous; all local matters on each reservation they had a right to manage that themselves. The government of the Seneca Nation does not exercise any territorial jurisdiction over the Tonawanda reservation. The Buffalos, Cattaraugus, and Alleganies have received their proportion of the $75,000; they have received it every year since it was paid. The Indians at Buffalo have taken their improvement money. The Tonawanda band are contesting this matter on their own hook. The Nation has nothing to do with it. I have been a chief 33 or 34 years, since the last war; at the treaty of 1797 I was present at a council at Geneseo; I was small; they did not act by majority, the chiefs of the different bands agreed; they sold the wild lands, did not sell the lands where the different bands lived. After the treaty of 1826 the Indians on the small reservations went some to Tonawanda, some to Cattaraugus, some to Buffalo, and some to Allegany.

Direct examination resumed.—The Tonawanda and Buffalo Creek reservations by treaty of 1797 were places that they would not sell, they were places where the bands lived; when a sachem dies the Six Nations fill his place, and then they make chiefs to fill the places of those who have died, and it is not considered legal to make chiefs except at the time a sachem is made. There are 8 head sachems of the 6 Nations, but no one head sachem of the Seneca Nation. Between '38 and '42 the chiefs of the Seneca Nation in council commenced acting by majorities and voting. I cannot say at what time. This was done by the concurrence of three bands, but the Tonawandas never came into it. Those who came into that regulation have since that time acted in that way; they have a chairman and secretary; there is no law of the Seneca Nation by which such an agreement could be binding on the Tonawandas unless they chose. I was present at the treaty of '42, there were about 80 chiefs present. The Tonawanda chiefs refused to be bound by that

treaty of '42; they objected before they knew there was a large majority in favor of the treaty; before they commenced voting; they said all the time they would not leave their lands, they would not go.

Spencer H. Cone.—I am an Indian. I belong to the Tonawanda band and Seneca Nation; was born on Tonawanda reservation, I am 33 years old. When I was a boy the Indians occupied the wild lands in common, and all that a man improved was his, his individual property. Each Indian had a right to and did go any where on the wild lands and cut any timber he pleased. They occupy it now about the same as they did in my first recollection, only they have made greater improvements and have a greater number of claims. They have never surrendered or given up their reservation.

Cross-examined.—They are called the Tonawanda band of Seneca Indians. This contention about possession is a matter of the Band; it is not a national affair; the national government of the Senecas does not exercise any territorial jurisdiction over Tonawanda, and does not attempt to assert any authority over it. There are something less than 3000 Senecas in New York, mostly living on Cattaraugus reservation; I think over 2000 on Cattaraugus and Allegany. From information I think there are about 50 white families settled on the reservation and about 300 white persons.

Direct examination resumed.—The Tonawanda reservation is governed now as to local matters the same as it was when I was a boy, so far as I have any knowledge; the other bands have never assumed to have territorial jurisdiction to my knowledge. One band does not make up the Seneca Nation more than another.

For defence.

Nathaniel T. Strong.—I am an Indian; I reside on Cattaraugus reservation in Erie county; I claim that I am a chief; the Cattaraugus and Alleganies, and a portion of the Buffalos have received their proportion of the interest on the $75,000; it has been received every year since the payment. Prior to 1848 it was paid to the chiefs by government agent, and they distributed it to the familes according to the number of members of family. The two first quarters of 1848 was paid in this way, and two last quarters in a new mode.

Israel Jemison.—I am an Indian; I reside on Cattaraugus reservation; I am close to 60 years of age; I think I am a chief of the Seneca Nation; have been so about twenty years. The representatives were the chiefs in council, and a majority was conclusive. There were a little over 80 chiefs in 1842; in national affairs the chiefs in council or a majority of them settled them, as I understand it. All the Indians except the Tonawandas have received their proportion of the income of the $75,000 paid to Gov-

ernment; they received it through their chiefs. The Tonawandas had forbidden the chiefs to receive the share that would have belonged to them; this was the reason that it was not all received; I thought it would be lost to the Tonawandas if they did not receive it; it was not taken by the chiefs, because it did not belong to them. We supposed each was entitled to a share. At the time the first payment was made it was proposed that the Nation should receive it and keep it or use it for national purposes, but the Tonawanda chiefs forbid them. He thinks the reason given by the chiefs was that they had not sold or given up their lands; probably it was understood that this money was to be left and reserved for the Tonawandas in the hands of Government.

The Seneca Nation since the payment of $75,000, has not exercised or assumed to exercise any control or jurisdiction over Tonawanda. This matter of contention is a matter of the band alone, and not a matter of the Nation. I was present at the treaty of 1826. There were some individual improvements on Caneadea, Conewaugus, Squawkie Hill; I think the Indians living on the reservations were not willing to have their reservations sold; I understand that the greatest number of them were willing to have them sold; thinks it was carried by a majority of the chiefs in council; I understand that when it is said any measure is carried in council by unanimity, is meant that the measure is carried by a majority, and the minority is no more noticed.

Cross-examined.—I was present at the treaty of 1838; a majority did not sign that treaty; when the treaty of 1826 was made, Captain Parish, the Indian agent, suggested to them that they had better sell, as they were liable to be made drunk, and this argument was used to induce them to go and live with the rest. Red Jacket was at first opposed, but at last signed it. Previous to 1838 there was never known any such thing as voting in council. The Indians at Tonawanda are as much the Seneca Nation as the Indians at Cattaraugus; they have always been scattered in different bands; on small matters the chiefs of the band controlled, but in important matters it was referred to the council of the Nation. In small matters chiefs of other bands had no control; he could give an opinion if requested. Since 1844 I have heard that some chiefs have been made, but I do not know; I believe there has. As far as I understand, when a chief of a family as Bear, Deer, Snipe, Turtle, &c., dies, the family get together and select a successor, and when the council of the Six Nations get together he is installed. I have not seen any Tonawanda chiefs made since 1844. I think chiefs have started from Cattaraugus since 1844 to go and meet in council to make Tonawanda chiefs; can't say at what time. I do not recollect that there has been a general council of the Six Nations since 1844, but the Tonawanda chiefs have been there after money, and that was the time that the Tonawanda chiefs objected to receiving any part of their share, and it was agreed in that coun-

cil that it should not be received, and the Tonawanda chiefs said they would not receive it, and would not give up their lands. Since 1844 there has not been any other general council except about this money that he recollects. I think it was contemplated to hold a council at Cattaraugus to make chiefs. I have heard that one was held at Tonawanda to make chiefs. After the act of 1845, the Allegany and Cattaraugus Indians generally did their business under that law. The act of the Tonawanda chiefs is not the act of the Nation, in a national point of view, until all are in council. Previous to 1838 in council they acted by obtaining views of the greatest number; they obtained their views by talking; sometimes they appoint a chairman, and the chairman calls upon all those in favor of a certain measure to stand up, sometimes by ballot, and sometimes by ayes and noes. There was no balloting by paper prior to the law of 1845. They debate the question until they get tired of it and then vote. When the chiefs of a band regulated a small local matter, by the custom and usages of the nation it then became a law; this law was the law of the band. All proper regulations the people, come from where they may, are under obligations to obey.

Saul Logan.—I am an Indian; live at Cattaraugus; I am a chief; I have been a chief nine or ten years. Previous to 1845 the Seneca Nation acted by chiefs in council; they acted in council by debating and discussing the matter, and the greatest number which were of one opinion carried the point; it was necessary for all the chiefs on the four reservations to be present; if one is sick, it cannot be remedied; all are requested to meet in council, and all that are able come, and that makes a council; when they meet in council, if the majority concur in anything, that is conclusive, and it is done. The chiefs of a band alone cannot do any act which will be the act of the Nation. This contention of the Tonawanda band is an affair of the band and not an affair of the Nation. The Seneca Nation, since the payment of the $75,000, have not assumed to exercise any control over the Tonawanda band, and they have not exercised any territorial jurisdiction over the Tonawanda reservation.

Cross-examined.—The Tonawanda Indians are as much the Seneca Nation as the Cattaraugus. Since the law of 1845 there has not been any general council of the Nation, except about their money and to make chiefs, and the Tonawanda band have not exercised any territorial jurisdiction over Cattaraugus reservation. Territorial jurisdiction over Cattaraugus has been exercised by the Indians there, and by the Tonawanda band over their territory here. I was present when they made chiefs at Tonawanda about 4 years ago; they made Benjamin Jonas, Richard Cooper, and Spring; they and some others were made chiefs according to custom; there were some chiefs there from the east, and a considerable number from Cattaraugus; general notice was given. I never heard of

such a thing as voting until some time after I was made a chief. The other bands could not convey away the Tonawanda reservation so long as the Tonawandas refused. Until the practice of voting, I have never seen them in council count Indians. They had no chairman; in council it was usual to talk around and get their minds; if one objected, he had an opportunity; if a minority objected, say 12 to 55, according to the usages and custom the council would have no power to act. Since the custom of voting has obtained, what the majority would do would be the act. The Indians in their affairs have acted by majorities since some time before the compromise treaty, between '38 and '42—the treaty of '38 having been signed by very few, and Mr. Heacock suggested that the only remedy was to go by majority. They thought probably it would be best for them to do so, as they were in close quarters; it was not exactly agreed to by all the chiefs—the Tonawandas dissented. It was only the Tonawandas that dissented from that arrangement. At the treaty in 1842 the Indians were told that if they did not assent to this they might all have to go west; I do not recollect.

Jemmy Johnson.—When an Indian makes an improvement it is his, and no other Indian has a right to it. After he underbrushes it, it is his individual claim. He can sell and dispose of it as his individual property, and has been done. The Indians at Tonawanda hold the lands which they have improved individually in severalty. I cannot say how many acres of improvements are held by the Indians; I cannot say whether there are two thousand acres. Every Indian has his improvements; I mean the heads of families, and those who are strong and able—the young men. I cannot say how many Indians have improvements; there are some large families where the different members of the family have individual improvements; some of the women have individual improvements. I think it is probable it is known by all the Indians what improvements belong to different persons. The band or the Nation cannot take an individual improvement and dispose of it without the consent of the individual. One Indian can sell his improvement to another Indian of the same band without the consent of the band; he cannot sell his improvement to an Indian of another band without the consent of his own band. If a piece of land is underbrushed, it is as much the Indian improvement or claim as if he had done something more. The Indians respect each other's improvements; the only property occupied in common by the band is the wild, unimproved land. This mode of holding property has always been so for a long time; it was so on the Buffalo Creek reservation before they went to Cattaraugus; the same in all, I think. The Onondagas hold their lands about the same way.

John Blacksmith.—The moment an Indian commences to underbrush land it is his land, and it is as much his as if he had improved it further, and no one has a right to touch it. The Nation or band

have no right to sell this land, his improvements, without his consent. The individual Indians own and occupy the improvements in severalty. The band occupy in common only the wild, unimproved land. Indians of the same band can buy and sell their improvements, and the Indians respect each other's rights, and each occupies his own improvement in severalty.

Cross-examined.—Such has been the custom for many years, since they began to make improvements. At first they clashed and claimed each other's improvements, and the old men, the chiefs, made regulations so that they should respect each other's rights. It was the same at Buffalo Creek and Allegany and Cattaraugus, and among all the Indians of New York so far as he knows.

Asa Cutler.—I live in Alabama; I am acquainted with the Tonawanda reservation; I believe it has been surveyed into lots. I have seen the land marks and numbers, have traversed them; the numbers of the lots were originally marked on stakes, placed at the corners. There are about 50 white families residing on the reservation, perhaps a little upwards. They are mostly settled on the north side of the creek and on the forest lands. Some have been on there as early as 1843 or 1844, perhaps. Those I refer to came on there after the sale here at the court house; they have purchased lands there, and cleared up their farms and built on them; they have built some barns on the reservation to my knowledge; they have fenced the lands they have cleared, and have brought the land into cultivation for agricultural purposes. Roads have been opened and worked; there has been a school house built on the Reservation, and a school has been kept there for some time; they have been assessed, taxes levied, and they have paid it to the town collector. When roads have been opened, the roads have been districted, overseers appointed at the town meeting, taxes assessed, and they have been warned and have worked their tax; they have been taxed in this way about two years, including this year; the first tax that was levied in Alabama was in 1847. There are about 325 white persons on the reservation; I know nearly all of them.

Cross-examined.—I do not recollect but one family that has come upon the reservation since last January; they have continued to make improvements since last January, and have felled timber. I reside on the reservation. I do not know that a single white person has come upon the reservation and settled there with the assent of chiefs; as long ago as 1847 some white persons were sued by individual Indians for occupying Indian improvements. The Indian villages are principally on the south side of the creek, there are some Indian families on the north side of the creek, some three or four. I suppose that full one half of the reservation is on the north side of the creek. I have not known the Ogden Company to make exertions to get white persons on this reservation. I have been an assessor during this time. I signed one application to the commissioners to get highway district laid out, I believe that is all; a

number of the settlers signed the application for a highway; it was laid out by their procurement. No Indian signed the application to my knowledge. The settlers were generally opposed to being taxed. I supposed my duty as assessor required me to have their lands taxed; I acted according to the best information I could get. We were directed by Esquire Brown, who was supervisor of that town, that is, we were advised by Mr. Brown to assess the wild lands and not to assess the Indian improvements. The settlers said if any was taxed it ought all to be taxed. I have heard the remark from them that if a part was Indian lands it was all Indian lands. Some of the Indian improvements were assessed the first year that they were occupied by white settlers. No Indian improvements occupied by Indians were ever assessed intentionally. We took a list of lots and designated those that had Indian improvements on them and left it to the supervisors, and they did not tax them.

Direct examination resumed.—Some of the roads were opened where there was no Indian road, I am not sure, however. The Indian reservation is cut up into roads, trails, and timber roads. The roads laid out would cut an Indian road and follow pretty much in the same direction to the same point. There has been roads made there by white men in getting timber. In three cases in laying out roads the freeholders were called out to certify. The school house has been built about two years, and I have understood they have drawn the public money there. Before roads were laid there were a good many roads over the wild lands. There was originally a great deal of valuable timber on these lands, oak, white oak, black walnut, &c.; this timber has been taken off, and roads were made to get this timber and a greater part of it was done prior to 1844. The roads that have been opened, have been opened without regard to any of these timber roads. In order to cross the reservation, I should take the road that is laid out, and this was an old Indian road. I do not know that there is a road that is not opened that is not along the direction of some Indian road. I mean that the road that is opened is in the same direction of the old Indian road, but not in the same track, the road opened is laid straight, and the old Indian road winds round, and the new road frequently crosses it; white people have straightened some old Indian roads. I have never known of the chiefs at Tonawanda interfering with the settlers possessing the forest lands. The school district is number 10.

James Ingalsbee, town clerk of Alabama, produced town records and proved thereby the erection and formation of highway districts and school districts, embracing the territory occupied by the white settlers on the reservation, and showing the apportionment of school moneys to the school districts; also, the laying out and survey of several highways upon the reservation and on the territory occupied by the white settlers. Also the assessment rolls showing that the lots occupied by the white settlers had been assessed to them, and other lots as non-resident lands.

Richard Smith, clerk of the board of supervisors, proved the levying of State tax in 1847 and 1848 upon all the lots upon the tract, excepting only the improved lands in the actual occupation of individual Indians.

Branon Young, county treasurer, proved that the lots assessed upon the tract as non-resident lands were returned to him, and the accounts thereof transmitted by him to the comptroller, and by the comptroller admitted, and the amount credited to the county and returned to the county treasurer.

On the part of complaint.

John Blacksmith.—I attended at the sale of lands by the Ogden Company at the court house in 1844; I forbid the sale. I told them that all the reservation belonged to the Tonawanda band, that it was all theirs. Since then we have been taking steps to get the settlers off. I have forbidden some of the settlers by words, not probably all the settlers; so long as we are in possession we expect the settlers to be removed under the laws protecting them; we have resorted to every means to get them off. The Indians have never consented to the making of these roads or to the cutting of timber; they have never consented to any of the improvements which the whites have made there. I was present at the treaty in 1842, and we were told by the commissioner that if we did not accept the terms by giving up Buffalo and Tonawanda reservations, and going to Allegany and Cattaraugus reservations, we should be obliged to go to the West.

Samuel Wilson.—I am an Indian; I belong to the Seneca Nation; I am 58 years old; I am a chief; have been chief 20 years. According to old custom, when the chiefs met in council they consulted together, and when they concurred in one opinion or with one man, then that was the act of the Nation; there was no voting, no chairman. The chiefs in council have no power to convey a reservation unless the chiefs living on the reservation consent. I have not attended any council when chiefs were made for Tonawandas; I was present at Cattaraugus; no Tonawanda chiefs were made there; thinks the Tonawanda chiefs were not notified. I knew of Commissioner Gillett coming to Newstead in 1838; he came down for the purpose of bribing the Tonawanda Indians, and Blacksmith in particular. Mr. Gillett, Orlando Allen, and H. B. Potter, (Judge Stryker, not certain about him,) George Jemison, Bill Johnson, who is dead now, Potter, and Allen were the agents of the Ogden Company.

Cross-examined.—I know they came there; I saw them start; I belonged to the party at the same time; this is all I know; I belonged to the same, and I knew all the operations, and as to Blacksmith in particular, to have him sign the treaty; I know it to be so. I did not come myself; I heard them talking about it before

they started, laying plans how to work it. Heard Potter, Allen, Johnson, Jemison, and Stryker talking about it. This contention about the Tonawanda reservation is a matter of the Tonawanda band and not a matter of the nation. In Indian councils, some older chief who was looked up to, such chief would give his opinion first, and after that any one speaks that is a mind to, and then sometimes, if the leading chiefs concurred, the others would fall in. In their national councils, it was considered that each tribe would concur, and if all concurred it was the act of that council; I think at Buffalo in 1842; I now live at Cattaraugus. The Indians at Buffalo have taken their money for their improvements; the interest of the $75,000 has been received by all except the Tonawandas, and their portion; I recollect treaty of 1826; I lived at Buffalo; I formerly lived at Squawkie Hill; it was 27 years ago since I left Genesee river. I remember the Conewaugus reservation; I remember that the Indians at Conewaugus were opposed to selling in 1826. Jesse Tiffany lived there; he was a chief; the principal chief that lived there was Hot-bread. I do not recollect whether Hot-bread was alive in 1826; there were three chiefs that he knew on that reservation; only one chief lived on the Conewaugus reservation at the time of the treaty of 1826. Kennedy and Jemison, on Squawkie Hill reservation, were opposed to selling at the commencement; only one man on Big Tree, John McEure, and he was considered as under the band at Squawkie Hill; he had an improvement there; he was opposed to selling; there was no chief on Gardeau reservation, because it was owned by one individual, a white woman, Mary Jemison; don't know whether she was opposed to selling when she consented to sell; she called the chiefs there; I do not know whether she was opposed to selling or not. There was probably about 50 persons on Conewaugus at the time of the treaty in 1826. There were a good many more at Caneadea, but the number he does not know. There were about 150 persons at Squawkie Hill. Generally the Indians on these small reservations were opposed to having their reservations sold; these Indians at last came in and consented to the sale. George Jemison often told these men (Potter, Allen, and others,) that it was necessary to get some of the Tonawanda chiefs to sign that treaty or it would be broken up; this was in the winter of 1838-9.

John Blacksmith.—There has been one council at Tonawanda to make chiefs since 1845; a regular council of the Nation was called about 4 years since. There was a general council held in 1847, and they made Tonawanda chiefs in 1847, and also made Tonawanda chiefs in 1845. There were delegations from Cattaraugus and Alleghany at both times. I knew Shongo and Tall Chief in 1826; they signed the treaty; I saw Shongo sign; I do not recollect about Tall Chief, whether he signed or not; I was not a chief then, and did not sign.

Cross-examined.—Young Chief and Joseph Snow were at the

council in 1845; there were a good many down, and he recollects them two in particular; there was no chiefs from Cattaraugus and Alleghany in 1847. The council in 1845 was just before corn got hard; in 1847 they were notified to come down and hear Jemmy Johnson preach; I do not recollect of any chief coming down at that time.

George Jemison.—I am an Indian; I live at Cattaraugus, belong to the Seneca Nation, and am a grandson of Mary Jemison; I am between 50 and 60; I was a chief before the revolution; there was no such thing known, previous to 1838, as carrying questions by majorities in Indian council. The chiefs have no power to sell a reservation while the chiefs on that reservation dissent, according to the customs of the Indians: I was very well acquainted with Ogden and Fellows in 1848; I was the next agent under the agents of Ogden and Fellows to procure signatures to the treaty of 1838 and the deed. The immediate agents of Ogden and Fellows were General Potter, Orlando Allen, Judge Stryker, Doctor Wilcox, Horatio Jones, Joseph White, (now dead,) a Quaker by the name of Bull, of Hamburgh, John F. Schermerhorn a minister. I have had frequent communications myself with Ogden and Fellows, and they encouraged me to do all I could. Some few of the chiefs signed in counsel, but the greatest number signed out of council in night. Money was offered to induce the chiefs to sign the treaty in the night. It was fixed that the chiefs should have so much money down and the balance when the title was complete to all four of the reservations, and the chief was to use his influence thereafter to get signatures. Six thousand dollars was the greatest sum agreed to be paid to any one chief. I know that a little over one-half of the sum agreed to be paid to any chief was paid. After the treaty came back from the Senate, we commenced operations again to hunt up signatures of the chiefs, and signatures were procured, most out of council. I bribed Samuel Wilson twice, got his signature first, and he broke loose, and I bribed him again, and got his signature the second time. After the treaty came back to get signatures to the treaty as amended by the Senate, the same means were used, but a little more was offered. After the treaty came back I went to Newsted with General Dearborn, Gillett, General Potter, and Little Johnson, an Indian; we were after Blacksmith in particular, and John Bigfire, and Jemmy Johnson, who were Tonawanda chiefs; they had then a majority of names to the signature. I said I had got tired of it, that we had then got a majority of names, and what is the use of more. Potter said it was absolutely necessary to get two or three of the Tonawanda chiefs to sign that treaty, and then I had to run about a good deal more. I was also so informed by the United States commissioner to the same effect. Not over thirty Indians have ever consented to and signed a treaty or deed to convey their four reservations in council. From '38 to '42 a majority of the Indian chiefs were op-

posed to selling their four reservations. From 1838 to and including 1842, it was the expressed wish of the chiefs, warriors, women, and all in council, not to have any of the reservations sold, and the Great Spirit knows the truth of it.

Cross-examined.—Question. Did a large majority of the chiefs in council in 1842 decide to sell two of the reservations?

Answer. There was not a very large majority; pretty much all the chiefs attended the council in 1842, I think between 80 and 90; I was there; I can't tell how much was paid me in 1838; I was promised $6,000, but I never got all of it, probably I got two-thirds. I had an open account with General Potter, which was never settled; General Potter claimed that I had been paid all, but I could not read and could not tell, but I think I got only two-thirds. I do not recollect how much I paid Wilson the first time; he got some money and some goods; the second time I paid him somewhere near $200. Joe Pierce was paid some money, can't recollect how much I got him; he was to have $3,000 in cash; he was paid down $100; he got some trinkets, horses, goods, &c., from General Potter. General Potter said it was only $200; an Indian was affronted. Little Johnson was paid money, somewhere about $200 or $300; we got him drunk when he signed the treaty; John Seneca got $200; Tall Peter got some money, probably $50; John Tall Chief about $25 and a bbl. of flour; Tommy Jemmy got some, can't tell how much; Bill Shanks got some, can't tell how much; John Bark got down probably about $150, and was to have more if treaty was accomplished, and a good many more; John Snow got considerable money, can't say how much; Jacob Jemison had some money, can't say how much; Big Deer had some money, considerable money, can't say how much; Daniel Two Guns got $400 down, he was to have $2,000 or $3,000 when accomplished, he got between $300 or $400 down; Sam Gordon I believe was offered $6,000; but I do not know how much he got; Jacob Bennett was to have $6,000, he got somewhere about $100, I suppose, so much passed my hands; Graybeard of Buffalo, now dead, can't say how much, he got some goods; Walter Thompson, can't say how much, he got some money; Jim Jonas got about $50 or $60 down; Sam Gordon's brother, John Gordon, can't say how much; William Tall Chief got $500; Tom Jemison got a good deal, a township most, a reserve of land; Jabez Stevenson got some land; Thompson S. Harris got a good deal; don't now recollect any more names, there were a good many others. It is not a regular custom, in the intercourse of Indians with the whites, for the chiefs to receive presents. It has been done so, the whites to the chiefs. It has been done privately, never openly; the chiefs have not ordinarily expected such things. I recollect the treaty of 1826; Red Jacket was bribed, don't know how much he received. Seneca White also, he receives $80 a year; Destroy Town, now dead, I think he received $50 a year; Henry Two Gun had an annuity between $40 and

$50; James Stevenson, now dead, I think had an annuity of about $50, he died about two years; Destroy Town died in 1834; Captain Strong died in May, 1846, had an annuity of $50 per year; Charles O'Beal, now living, heard him say he was promised $50, and got $40 a year; Gov. Blacksnake an annuity of $50; John Pierce an annuity of between $40 and $50; John Snow, now dead, don't recollect exact amount; they got pretty near the same amount, he died between '38 and '42; William Jones, now dead, about $50 a year, been dead one and a half year; Cornplanter did not receive an annuity. These are about all I recollect, probably there are others. John Little Beard about $50, now dead about 14 or 15 years; Jemmy Johnson does not receive an annuity; these are all I recollect.

A good many chiefs were paid down; Shongo was paid down, somewhere about $30 or $40; Chief Warrior had an annuity of about $40 or $50; Seneca White got the largest annuity, but Red Jacket got the most down. Captain Pollard, Captain Rilly, Young King, were paid down; they had older annuities, and Red Jacket was one of that number. The old annuities came from the old treaty of 1797, at Geneseo. These are about all I recollect. Corn Planter had an old annuity; can't say how much; considerable amount. Corn Planter has been dead probably 14 or 15 years. Farmers Brother had an annuity under treaty of 1797, I think about $200 a year; he was one of the most influential there was at that day; he died soon after the war with Great Britain. The annuities growing out of the treaty of 1826 were paid through Greig and Gibson of Canandaigua. When Captain Paris was agent he always brought the annuities of 1797 along with the $6,000, being the interest on the $100,000 provided by the treaty of 1797. The annuities growing out of the treaty of 1826 were paid about the same time the interest was paid on the $48,000. The annuities growing out of the treaty of 1826 still continue to be paid to those alive at the same time the interest is paid by Government. The people generally share in the amount paid by Government on the $100,000, under treaty of 1797, and the $48,000 paid under the treaty of 1826, but the people do not get any share of these individual annuities. I do not recollect the sale of Little Beard's reservation. The chiefs did not at some times pretend to be opposed to a sale, for the sake of getting something for themselves; they were opposed to selling, and did not want to sell; they were brought over by these annuities or payments, which was always done privately; these arrangements were always made in the first instance privately; no chief ever received anything in open council. I have been told by old chiefs that at the Morris treaty in 1797, this was the very first commencement of these proceedings, and that the arrangement was there made privately. This mode was suggested by Parrish, the agent, and Jones, the interpreter; the Indians would not sell, and they said they knew of a way of

getting them to sell by bribes, by giving their chiefs money. I do not know how much Red Jacket got down for signing the treaty of 1797, but he got about $200 annuity. He was told he might have a piece of land or have money. Pretty much all the leading influential chiefs at the treaty of 1797 received either money down or an annuity, or both. It was not the custom among the Seneca Indians for the chiefs to receive pay for services from the nation, but sometimes the band gave them something, but not as pay. I have been a chief between 15 and 20 years. The $500 which we used to receive from the State of New York, we divided among the young chiefs, not among them who received annuities. On the Allegany and Cattaraugus reservations they have now taken it from the chiefs and use it for national purposes. Sometimes and sometimes not, since the practice of voting by majorities originated, has that practice prevailed or existed; but since the law of 1845 this course has prevailed at Cattaraugus. This matter of contention is that of the Tonawandas alone. The Tonawanda Indians are as much the Seneca Nation of Indians as the Cattaraugus Indians are the Seneca Nation of Indians. The Tonawanda Indians have never assented to the way of voting by majorities; the annuities paid to the chiefs spoken of was not paid to them by any right, but bribe money; they were bought up with it. At the treaty of 1826, when they held a council, some Indians opposed and then they adjourned, and they labored with those opposing in the night-time. It was on these occasions that the annuities were agreed to be paid to shut up the mouths of those opposing. This practice of getting annuities was opposed by the people. In 1826 the consent of the chiefs was obtained, and they signed the treaty. From the earliest time the people and women were opposed to selling, even going back to the Morris treaty. The people found out afterwards that the chiefs had been bought, and in 1826 it was generally understood that this mode had been adopted at Morris' treaty; it was well understood and talked about as long as I can remember that the chiefs had done wrong.

Spencer Cone.—Asa Cutler has resided on the reservation since I returned from the West, which was three years since. An Indian from Cattaraugus or Allegany cannot come on to the Tonawanda reservation and make improvements on the wild lands without giving notice of his intention, and there must be some action of the chiefs of the Tonawanda band.

John Blacksmith.—I went to Taggart when he was district attorney to get him to remove the white men, and he refused to act.

Schedule B.

This schedule contains at length the following documents:

1. Chap. 49 of Laws of 1786. This act grants to certain commissioners the authority by which the deed of cession next hereinafter referred to was made on the part of New York.

2. The mutual agreement or act cession between the State of New York and the commonwealth of Massachusetts, by which was granted and ceded to Massachusetts the right of soil to a large tract of the western part of the State, including the premises in question. A part of the 6th article of the deed of cession provides—"That the inhabitants of the said lands and territories, being citizens of any of the United States, holding by grants from the commonwealth of Massachusetts, shall be entitled to equal rights with the other citizens of the State of New York.

A correct statement of so much of the residue of the contents of this document as is in any way material to the case will be found in the 6th vol. of Hill's Reports of cases in the Supreme Court at pages 546 and 547, and the statement there found of the contents is to be deemed a part hereof as much as if herein inserted at large.

3. Ratification of the mutual agreement and act of cession by the legislature of this State, dated Feb., 1787.

4. The treaty between the U. S. and the New York Indians of January 15, 1838, and the indenture or deed of cession thereto annexed and therein referred to, by which the Seneca Nation granted the premises in question with the other reservations to Messrs. Ogden & Fellows. This treaty and grant are to be found in Laws of Congress of 1840, (1st session of 26th Congress,) at page 119 and following, and the same are to be deemed a part hereof the same as if herein inserted at length. The same are also to be found in U. S. Statutes at Large, vol. page .

This purchase was approved as well by the U. S. commissioner as by the superintendent on the part of Massachusetts.

5. The act of confirmation of the same treaty indenture and purchase by the commonwealth of Massachusetts, which confirmation bore date the 12th of March, 1838, and was recorded in the office of the secretary of State of the State of New York, on the 11th of September, 1838, and within the time required by the act of cession.

6. The treaty between the United States and the Seneca Nation of Indians, bearing date at Buffalo Creek, the 20th of May, 1842, which is to be found at length in Laws of Congress of 1842, (2d session of 27th Congress,) at page 234 and following. The said treaty is to be deemed a part hereof the same as if herein inserted at length. It is also to be found in U. S. Statutes at Large vol. page &c.

7. The indenture which is recited in the last mentioned treaty executed on the part of the Seneca Nation by the chiefs, and duly proved by a subscribing witness, and the certificates of approval thereof thereon endorsed by Ambrose Spencer, commissioner on the part of the U. S., and by Samuel Hoare, superintendent on the part of Massachusetts, both of which certificates were duly acknowledged. The body of the indenture is the same as set out in the said treaty.

8. The act of confirmation of the last mentioned treaty and indenture, and the purchase therein and thereby made, by the commonwealth of Massachusetts duly and properly authenticated, and which shows that Massachusetts had in fact confirmed the said treaty, indenture, and purchase, on the 29th of September, 1842, and it appeared by a certificate thereon endorsed that the act of confirmation was recorded in the office of the secretary of State of the State of New York, within the time required by the mutual agreement or act of cession.

9. A certified copy from the War Department of the U. S. of the appointment by the Sec'y of War of Thomas C. Love as one of the arbitrators under the treaty and indenture, and a recognition of the appointment of Ira Cook as arbitrator by Ogden and Fellows.

10. The award of Love and Cook which follows at length (except the schedules) which are not important for any purpose of this case. This award was filed in the office of the Secretary of the Department of War of the U. S. on the first of April, 1844, as appeared by the certified copy produced from the department.

This award, except the said schedules, is as follows:

Whereas at a council held at Buffalo Creek, in the State of New York, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-two, an indenture of that date was made and executed by and between Thomas L. Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, of the one part, and the chiefs and head men of the Seneca Nation of Indians in council duly assembled, in the presence of Samuel Hoare, the superintendent thereto authorized and appointed by and on the part of the commonwealth of Massachusetts, and of Ambrose Spencer, a commissioner, thereto duly appointed and authorized on the part of the U. S., by which said indenture, the said parties thereto among other things made and entered into certain releases, covenants, and agreements relative to the sale and conveyance by the said chiefs and head men of the Seneca Nation to the said Thomas L. Ogden and Joseph Fellows, of those four several tracts of land situate in the State of New York, then and yet occupied by the said Nation or the people thereof, and severally described in the said indenture as the Buffalo Creek reservation, the Cattaraugus reservation, the Allegany reservation, and the Tonawanda reservation, a portion of the third article of which said indenture is in these words, viz:

"The present value of the Indian title to the whole of the said four tracts of land, including the improvements thereon, shall, for all the purposes of this present compact, be deemed and taken to be two hundred and two thousand dollars. Of which sum one hundred thousand dollars shall be deemed to be the value of such title in and to all the lands within the said four tracts, exclusive of the improvements thereon, and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts,

and of the said sum of one hundred thousand dollars, the said Ogden and Fellows shall pay to the Seneca Nation such proportion as the value of all the lands within the said two tracts, called the Buffalo Creek and Tonawanda reservations, shall bear to the value of all the land within all the said four tracts; and of the said sum of one hundred and two thousand dollars, the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts shall bear to the value of the improvements on all the said four tracts.

And the fourth article of which said indenture is in these words, viz:

"The amount of the consideration moneys to be paid in pursuance of the last preceding article shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows, which arbitrators, in order to such judgment and award, and to the performance of the other duties hereby imposed on them, may employ suitable surveyors, to explore, examine, and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the said arbitrators as to quantity, in determining the amount of the said consideration money.

"The same arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which, on the principles above stated, they shall ascertain and award to be the proportional value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonawanda reservation, and in case the said arbitrators shall disagree as to any of the matters hereby submitted to them, they may choose an umpire, whose decision thereon shall be final and conclusive; and the said arbitrators shall make a report, in writing, of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York in order to their being recorded, one of such reports to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows." Which said indenture is recited and incorporated in a certain treaty of the same date made between the United States of America on the one part, and the chiefs, head men, and warriors of the Seneca Nation of Indians duly assembled in council, on the other part, which treaty was proclaimed by the President of the United States on the twentieth day of August, in the year of our Lord one thousand eight hundred and forty-two, as having been duly ratified and confirmed, as by the said indenture, treaty, and proclamation more fully appear.

And whereas the undersigned, Thomas C. Love, of the city of Buffalo, Erie county, New York, (late of the town of Clarence in the said county,) and Ira Cook, of the town of Byron, Genesee county, New York, have been duly named, constituted, and ap-

pointed the arbitrators contemplated by the above-recited fourth article of the said indenture, the said Thomas C. Love by the Secretary of the War Department of the United States, and the said Ira Cook by the said Ogden and Fellows, and have performed and discharged the duties imposed upon them as such arbitrators so far forth as was in their power to do.

Now, therefore, pursuant to the provisions of the said fourth article of the said indenture, the undersigned, the arbitrators aforesaid, do heredy report as follows, viz:

That they have this day agreed upon all the matters in and by the said indenture submitted to them, the said arbitrators.

They have personally and by the aid of suitable surveyors employed for that purpose, thoroughly examined and explored the said tracts of land, described as the Buffalo Creek reservation, the Cattaraugus reservation, and the Allegany reservation, and all the improvements upon each of them, and have ascertained the contents of each of said three tracts of land last named.

That said tract of land described as the Buffalo Creek reservation contains forty-nine thousand nine hundred and twenty acres.

That the tract of land described as the Cattaraugus reservation contains twenty-one thousand seven hundred and sixty-seven acres.

That said tract of land described as the Allegany reservation, contains twenty-nine thousand two hundred and thirty-eight acres and eighty-three one-hundredths of an acre.

That the schedule marked "A," and entitled "A schedule of the improvements on the Buffalo Creek reservation," which is signed by said arbitrators, and is annexed hereto and made a part hereof, contains a full, true, and particular description of every improvement upon said tract of land, described as the Buffalo Creek reservation, the value of each of said improvements, the name of the individual Indian owning each of said improvements, the entire value of all the improvements owned by each individual Indian, and the amount to be paid to each individual Indian for such improvements out of the sum which the undersigned arbitrators have ascertained and awarded to be the proportionate value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonawanda reservation, as hereinafter contained.

That the schedule marked "B," and entitled "A schedule of the improvements on the Cattaraugus reservation," which is signed by the said arbitrators, and is annexed hereto and made a part hereof, contains a full, true, and particular description of every improvement upon said tract of land, described as the Cattaraugus reservation, the value of each of said improvements, the name of the individual Indian owning each of said improvements, and the entire value of all the improvements owned by each individual Indian.

That the schedule marked "C," and entitled "A schedule of the improvements on the Allegany reservation," which is signed by the

said arbitrators, and is annexed hereto and made a part hereof, contains a full, true, and particular description of every improvement upon said tract of land, described as the Allegany reservation, the value of each of said improvements, the name of the individual Indian owning each of the said improvements, and the entire value of all the improvements owned by each individual Indian.

That they have determined, adjudged, and awarded, and they, the said arbitrators, do hereby determine, adjudge, and award, that of the sum of one hundred thousand dollars, which, in and by the said fourth article of the said indenture, is deemed to be the value of the Indian title to all the lands within the said four tracts, exclusive of the improvements thereon, the said Ogden and Fellows shall pay to the said Seneca Nation the sum of seventy-five thousand dollars, as the proportion which the value of all the lands within the said two tracts, called the Buffalo Creek reservation and the Tonawanda reservation, bears to the value of all the lands within all the said four tracts.

That they have determined, adjudged, and awarded, and they, the said arbitrators, do hereby determine, adjudge, and award, that of the sum of one hundred and two thousand dollars, which, in and by the said fourth article of the said indenture, is deemed to be the value of all the improvements within the said four tracts, the said Ogden and Fellows shall pay to the said Seneca Nation the sum of fifty-eight thousand seven hundred and sixty-eight dollars and ninety-six cents, as the proportion which the value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonawanda reservation, bears to the value of the improvements on all the said four tracts.

That they have determined, adjudged, and awarded, and they, the said arbitrators, do hereby determine, adjudge, and award, that the amount to be paid to each individual Indian named in the aforesaid schedule, marked A, is the sum which in the said schedule, marked A, is set opposite his or her name as the amount to be paid to him or her for his or her improvements out of the said sum of fifty-eight thousand seven hundred and sixty-eight dollars and ninety-six cents, which the undersigned arbitrators have so as aforesaid ascertained and awarded to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonawanda reservation.

That the said arbitrators have faithfully and to the utmost of their power and ability endeavored fully to perform and discharge the duties imposed upon them as such arbitrators, in relation to the Tonawanda reservation and the improvements thereon, but that they have been forcibly prevented from such full performance and discharge of their said duties by the action of that portion of the said Seneca Nation which occupies the said Tonawanda reservation.

That on the twenty-second day of October last, they, the said arbitrators repaired to the said Tonawanda reservation, accompanied

by suitable surveyors, for the purpose of exploring and examining the same and the improvements thereon, pursuant to the provisions of the said fourth article of the said indenture; that having been informed from credible sources that that portion of the Seneca Nation residing on the said Tonawanda reservation had determined not to permit the arbitrators to go upon that reservation, and discharge their duties as such arbitrators, they, the arbitrators, called a council of that portion of the Seneca nation residing on that reservation, which council assembled at the council-house on said reservation, and was composed of the chiefs and head men and a very large majority (and nearly all) of the said portion of the Seneca Nation residing on said reservation; that the said arbitrators, as fully as it was in their power explained to the said council, the provisions and obligations of the aforesaid indenture and treaty, the rights and duties of the parties thereto, and particularly of the Seneca Nation under said treaty and indenture, their character and duties as such arbitrators, and the object of their coming. That the said arbitrators also used every means in their power to persuade them to permit the said arbitrators to proceed and discharge their duties upon that reservation, and to furnish the necessary information and assistance for that purpose. That the said council with unanimous voice and action absolutely and unconditionally refused to permit the said arbitrators to explore or examine the said reservation or any part thereof, or to ascertain or value the improvements thereon, or any of them, or to perform any act in discharge of their duties as such arbitrators in relation to that reservation, and directed the said arbitrators to leave the said reservation, which the said arbitrators accordingly did.

That the said arbitrators forthwith reported to the Secretary of the War Department of the United States their attempt to discharge their duties as such arbitrators in relation to the said Tonawanda reservation, and the result of such attempt as above set forth. That in reply thereto, the said Secretary of the War Department instructed the said arbitrators to make a further attempt to discharge their duties in relation to the said Tonwanda reservation, and for that purpose to convene another council of that part of the said Seneca Nation residing on that reservation, and make further efforts to secure their consent to and aid in the performance by the said arbitrators of their duties in relation thereto.

That in pursuance of such instructions, the said arbitrators, on the twenty-seventh day of December last, again repaired to the said Tonawanda reservation, and again convened a council of that portion of the Seneca Nation residing on that reservation, which council forthwith assembled at the council-house on said reservation, and was composed of the chiefs and headmen, and a very large majority (and nearly all) of that part of the Seneca Nation residing on the said Tonawanda reservation; that the said arbitrators communicated to the said council the said instructions so as

aforesaid received by them from the Secretary of the War Department, and accompanied the same with a renewed and full explanation of the provisions and obligations of the aforesaid indenture and treaty, the rights and duties of the Seneca Nation under it, the duties of the arbitrators and the object of their coming and the opinion of the arbitrators, of the consequences to that portion of the Seneca Nation residing on the Tonawanda reservation of a continued refusal on their part to permit the discharge of their duties by such arbitrators in relation to that reservation, and to give the necessary information and assistance for that purpose. That the said arbitrators again used every means in their power to prevail upon the said council to abandon their opposition to the discharge by the said arbitrators of their duties in relation to the said Tonawanda reservation, and to co-operate with them in such discharge of their duties; that the said council again with unanimous resolution absolutely refused to permit the said arbitrators to do any act upon that reservation in discharge of their duties in relation thereto. That the said arbitrators then declared their intention to proceed to discharge their said duties notwithstanding the resolution of the council, and gave notice that they would then proceed to ascertain and value the improvements of any individual Indian on the said reservation who would give his or her name, point out his or her improvements, and give the necessary information relative to the same. That the declaration and notice by the arbitrators produced a violent excitement in the council, and the arbitrators were told that unless they immediately withdrew from said reservation, they would be carried by force without the bounds thereof; and thereupon the said arbitrators were each taken by the arm by a chief, and accompanied by him and warriors off the said reservation. That by the means and manner above set forth, the said arbitrators have been prevented from exploring or examining the said Tonawanda reservation or the improvements thereon, or any of them, therefore they cannot determine the amount to be paid to any individual Indian out of the sum which they have as aforesaid ascertained and awarded to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonawanda reservation, and that it would have been impossible for them, the said arbitrators, to have performed this portion of their duties in relation to the Tonawanda reservation without information from the active aid and co-operation of the individual Indians residing on that reservation. That by the aid of previous surveyors of the said tract called the Tonawanda reservation, of the accuracy of which the said arbitrators entertain no doubt, they have found and estimated that it contains twelve thousand eight hundred acres of land. That having been in the manner and by the means above set forth prevented from ascertaining, by personal examination and surveys, what were the improvements on the said tract called the Tonawanda reservation, or the value of

such improvements or any particulars in relation thereto, they, the said arbitrators, have, from the best information they could obtain, estimated and set down, and they do hereby estimate and set down, the entire value of all the improvements on that reservation at the sum of twenty-eight thousand dollars, and do hereby award for all the improvements on said reservation, the proportionate sum of fifteen thousand and eighteen dollars and thirty-six cents, as appears in schedule D, hereto annexed and made a part of this report. Finally, that all the fees, charges, and expenses of them, the said arbitrators, and of all the surveyors and other persons by them employed in the discharge of their said duties, have been paid and discharged by the said Ogden and Fellows. In witness of all which, they, the said arbitrators, have set their hands and seals hereunto in duplicate, one of them to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows.

Done at the city of Buffalo, in the State of New York, the twenty-sixth day of March, one thousand eight hundred and forty-four.

THOMAS C. LOVE, [L. S.]
IRA COOK, [L. S.]

Sealed and delivered in presence of—
WM. YOUNG, Jr.
CHARLES L. MAYOR.

STATE OF NEW YORK,
Erie County, ss:

I hereby certify that on this 26th day of March, 1844, before me, came Thomas C. Love and Ira Cook, with whom I am personally acquainted, and whom I know to be the same persons described in and who executed the foregoing instrument and the schedules thereto annexed, and they severally acknowledged that they had executed the same.

N. K. HALL,
First Judge Erie Co. Courts, and Counsellor at Law in the Supreme Court.

Recapitulation.

	Valuation of improvements.	Sums awarded.	
Buffalo reservation,	81,567 28	43,750 60	
Tonawanda "	28,000 00	15,018 36	$58,768 96 payable by Ogden & Fellows.
Cattaraugus "	42,190 25	22,629 61	
Allegany "	38,409 50	20,601 43	$43,231 04 payable by the U. S. Government. $102,000 00.
	$190,167 03		

11. Duly authenticated documents from the War and Treasury Departments of the United States, showing the payment of the $75,000 by Messrs. Ogden & Fellows, pursuant to the treaty and indenture, on the 24th of April, 1844; also showing the payment to the Government of the U. S., under directions of the Secretary of War, of the improvement moneys awarded for the improvements on the Buffalo Creek reservation prior to April 1, 1846, and also the payment to the Government of the U. S. on the 31st March, 1846, of the $15,018 36 awarded for the improvements on the Tonawanda reservation.

12. The several documents which are next herein copied at length.

Schedule "B."

BUFFALO, January 2, 1849.

To the Hon. Secretary of War:

By a reference to the records in the office of Indian Affairs, it will be seen that Oct. 1842, I was appointed by the Secretary of War an arbitrator in pursuance of the provisions of a treaty with the Seneca Indians for the sale of their lands to Messrs. Ogden & Fellows, in connection with another gentleman named by the purchasers. On the 28th of Dec., 1843, we made a report to the department of our action as such arbitrators, in respect to our efforts to value the improvements on the Tonawanda reservation, asking further instructions, and on the 4th of Jan., 1844, an answer was given us thereon; to these papers I beg leave to refer. In pursuance to the instructions received, we did in March following make, execute, and acknowledge our final award, and sent the same to the Secretary of War, who received and filed it as provided by the treaty, and gave us notice thereof. No communication has since been made to me by the department, or any suggestion that my duties as such arbitrator had not been fully and finally discharged, and my services terminated.

I have been called upon this winter by the purchasers to assume the authority of further action, and to enter upon the Tonawanda reservation against the avowed will of the Indians, to apportion certain moneys among them which the purchasers deem necessary to facilitate their obtaining possession of the lands.

Believing that my official duties in the premises have been fully discharged and my services ended by the award made, and that all further action on my part will be officious and without authority, I have declined acting. If, therefore, the Secretary of War shall come to a different conclusion on an examination of the matter, and determine that there are other and further duties legally imposed and that still devolve on me to peform, I hereby tender my resignation.

Yours, respectfully,
(Signed) THOMAS C. LOVE.

WAR DEPARMENT, February 7th, 1849.

SIR: Thomas C. Love, esq., who was appointed arbitrator on the part of the United States, to ascertain the value of the lands and improvements relinquished by the Seneca Indians in the treaty with them of May 20th, 1842, having resigned, you are hereby appointed in his place. Your associate, appointed by Messrs. Ogden and Fellows, as provided for in that treaty, is Ira Cook, esq., with whom you will confer and execute the duties pertaining to this appointment, in conformity with such instructions as may be given to you by the Commissioner of Indian Affairs.

Very respectfully, your ob't serv't,

W. L. MARCY.

HORACE GAY, Esq., Rochester, N. Y.

OFFICE OF INDIAN AFFAIRS, Feb. 7, 1849.

HORACE GAY, Esq., Rochester, N. Y.

SIR: I have the honor to transmit herewith an appointment by the Secretary of War, in the place of Thomas C. Love, esq., resigned, as arbitrator on the part of the United States under the 4th article of the treaty of May 20th, 1842, with the Seneca Indians of New York. As directed by the Secretary of War, I proceed to give you such instructions as appear necessary at this time to enable you to understand the nature of your duties, and to proceed to execute them, in accordance with the views entertained by him on the subject.

All the duties required by the 4th article of the treaty mentioned to be performed by the arbitrators have been executed, except the apportionment among the individual owners of the improvements on the Tonawanda reservation, of the aggregate amount to be paid therefor, according to the report of Messrs. Love and Cook, viz: $15,018 36. The entire value of these improvements those gentlemen set down at $28,000, but there was to be paid for them, in the aggregate only such a sum as would bear the same proportion to the $102,000, the value of the improvements on all four of the reservations, as those on the Tonawanda reservation bear to them in actual value, and this proportionate sum is $15,018 36, the amount before stated. All, therefore, there yet remains to be done is to apportion this sum among the individual owners of the improvements on the reservation in question, according to their relative value, one case with another. The accompanying papers will, it is presumed, afford you all the information necessary to understand the details of this business and to proceed in its execution with your associate, Ira Cook, who is apprised of all the proceedings that have heretofore taken place in relation to it.

W. M.

13. The supplementary award of Gay and Cook, which recites

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what had been done by Love and Cook, and assumes and purports on its face to have finished what they left undone by making an award of the $15,018 36 among the owners of improvements on the Tonawanda reservation, as the same existed and were occupied or owned by the individual Indian owners at the time of the making of the award of Love and Cook.

This award was filed in the War Office on the 22d of February, 1851.

14. A copy of the order of Sec'y of War respecting the filing thereof, which here follows, and the letter from the President to Mr. Pringle, which also here follows at length:

WAR DEPARTMENT,
Washington, Feb'y 22, 1851.

The chief clerk of this department is directed to deposite and file the within document, purporting to be the award or report of Horace Gay and Ira Cook, arbitrators under the treaty between Thomas L. Ogden and Joseph Fellows and the Seneca Nation of Indians, of the 20th May, 1842. Made the 21st day of March, 1849.

This order to file and deposite the said document is not intended, however, in any manner to affect the rights of the parties interested in said treaty or award, or to determine whether it be or be not a legal and valid award, or whether it be or be not conformable to the agreement of parties, (questions which this department is not called upon to determine,) but simply to comply with a formality which seems to be a prerequisite to the exercise of the rights of the parties or to their determination by judicial authority.

C. M. CONRAD,
Secretary of War.

WAR DEPARTMENT,
Washington, June 14, 1851.

I certify that the copy on the preceding page is a true copy of the original endorsement of the Secretary of War on the document purporting to be the award or report of Horace Gay and Ira Cook, arbitrators, &c., &c.

JOHN POTTS,
Chief Clerk War Dept.

WASHINGTON, June 26th, 1851.

SIR: You are hereby appointed agent to pay over to the Indians of the Tonawanda tribe of the Seneca Nation, in the State of New York, certain sums of money to which they are or may become entitled under the provisions of "a treaty made and concluded at Buffalo Creek, in the State of New York, on the twentieth day of May, in the year eighteen hundred and forty-two, between the

United States of America, acting herein by Ambrose Spencer, their commissioner, thereto duly authorized, on the one part, and the chiefs, headmen, and warriors of the Seneca Nation of Indians duly assembled in council, on the other part."

The money which will be placed in your hands is the value of the improvements upon the tract of land called the Tonawanda reservation as appraised by arbitrators appointed pursuant to the terms of said treaty; an extract of the report of said arbitrators will be furnished you, showing the value of the improvements of each Indian, the amount which is to be paid to him or her upon proof made to your entire satisfaction that a formal surrender of the lands and improvements described in said report has been made by the Indian owner on the premises to Thomas Ludlow Ogden and Joseph Fellows, or the survivor of them, named in said treaty, or their or his assigns, or to their or his authorized agent.

The payments will be made at the agency and in the presence of the sub-agent for the Seneca Nation, or some person designated by him, who will identify the parties entitled to payment, and proper vouchers will be taken therefor. All moneys not disbursed within one year from this date will be repaid by you into the treasury of the United States unless the period be in the meantime prolonged.

You will be required to give bond, with two approved sureties, in the sum of twenty thousand dollars for the faithful performance of your duties; and on the receipt of such bond, the sum to be disbursed will be remitted to you, with a copy of so much of the arbitrators' report, above referred to, as may be necessary for your guidance.

MILLARD FILLMORE.

Judge Dibble's opinion on the application of the District Attorney for his warrant to remove intruders on Tonawanda Indian lands.

This is a proceeding instituted under the act of 1821, by the district attorney of the county of Genesee, to remove from the Tonawanda reservation Asa Cutler, John Underhill, junior, and Azro Underhill, who are conceded to be persons other than Indians or missionaries.

It is also admitted that the respondents reside upon said reservation, which is known as the 12,800 acre tract, with their families, and that they so have resided there for seven years last past. That during all this time they have severally been in the actual possession of distinct lots or parcels of land upon said tract, claiming title thereto from Joseph Fellows as survivor of Thomas L. Ogden, who died in 1844, founding such claim of title upon written instruments, and that such possession has always been adverse to the Seneca Nation of Indians.

That the premises occupied by Cutler were originally forest lands, and have been improved, enclosed, and cultivated by him.

That as to the possession of the Underhills, a portion of the lands had been improved by Indians prior to their entering into possession, and the residue was then forest lands, and have since been improved and cultivated by them.

That the possessions of the respondents are in a territory upon said tract which is entirely occupied by white settlers whose possessions are contiguous, and that there has been no actual occupation thereof by the Indians for the last five years, except that the Indians have from time to time cut timber from the forest lands, and that there are small improvements made by Indians upon the Cutler lot, not fenced in by him, and of which he never had possession, and the cattle of individual Indians have run in the woods.

That there are in the vicinity of the said white settlers, two or three small improvements made by Indians and in the occupation of individual Indians.

That in July, 1849, proceedings were had before the county judge of Genesee county for the removal of one John McDermid from the same lands, under said act, and that the same state of things now exists and has continued as existed at the time of taking the testimony in said proceedings, substantially in relation to the occupation of said lands, and the customs of the Indians and taxation of the settlers.

That there has been no cessation of this controversy between the Indians and settlers from that time to this.

That one of the Indians, Thomas Black, in his lifetime, and since his death, his heirs occupied the improved lands upon the Underhill lots, and since the Underhills went into possession of the other part of such lots.

That the Underhills went upon the Indian improvements thereon, and the heirs of Thomas Black molested them in the occupation, and they therefore agreed to and have since paid the said heirs the sum of $25 or thereabouts per annum for the use of such improvements and to be left unmolested.

It appears by the evidence, that in 1786 the commonwealth of Massachusetts ceded to the State of New York the government, sovereignty, and jurisdiction of four tracts or parcels of land, of which the Tonawanda reservation was one; and New York ceded to Massachusetts the right of pre-emption of the soil from the native Indian, and all other right or title of New York to the same.

The Seneca Nation of Indians then owned and occupied them, and under such cession Massachusetts only in fact acquired the right to purchase, to the exclusion of all others, when the Indians should conclude to sell.

Messrs. Ogden and Fellows subsequently acquired from Massachusetts such right, the title of the Indians not being thereby impaired or unfavorably affected, and before the grantees of Massa-

chusetts could by possibility be benefited by such purchase, it was necessary for them to acquire and extinguish the Indian title, and in May, 1842, they were so far successful as to procure a conveyance from Indians purporting to be the chiefs and headmen of the Seneca Nation, at a council held at Buffalo Creek, in the State of New York, on the 20th day of May, 1842, in the presence of the superintendent of the commonwealth of Massachusetts, and of a commissioner thereto duly appointed and authorized on the part of the United States; which conveyance, among other things, specified that the value of said four tracts of land, including the improvements thereon, should be deemed and taken to be two hundred and two thousand dollars, of which sum one hundred thousand dollars shall be deemed to be the value of such title in and to all the lands within the said four tracts, exclusive of the improvements thereon; and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts. And of the said sum of one hundred thousand dollars, the said Ogden & Fellows were to pay to the Seneca Nation such proportion as the value of all the lands within the said two tracts, called the Buffalo Creek and Tonawanda reservations, shall bear to the value of all the lands within the said four tracts. And of the said sum of one hundred and two thousand dollars, the said Ogden & Fellows were to pay such proportion as the value of the improvements on the same two tracts shall bear to the value of the improvements on all the said four tracts. And it was also further provided that the amount of the consideration moneys to be paid in pursuance of the last preceding article shall be determined by the judgment and award of arbitrators, one of whom should be named by the Secretary of the War Department of the U. S., and one by the said Ogden & Fellows, which arbitrators, in order to such judgment and award, and to the performance of the other duties thereby imposed on them, might employ suitable surveyors to explore, examine, and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity in determining the amount of said consideration money.

The said arbitrators were also to award and determine the amount to be paid to each individual Indian out of the sum which, on the principles above stated, they should ascertain and award to be the proportionate value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonawanda reservation; and in case the said arbitrators should disagree as to any of the matters thereby submitted to them, they might choose an umpire whose decision thereon should be final and conclusive; and the said arbitrators should make a report, in writing, of their proceedings in duplicate which was to be acknowledged or proved, and a copy filed in the office of the Secretary of War, and the other to be delivered to said Ogden & Fellows.

The possession of the forest lands was to be delivered to said Ogden & Fellows in one month, and of the improved lands in two years after the filing of said report in the office of said Secretary of the Department of War, upon the payment to the President of the United States of the amount to be so ascertained and awarded as the proportionate value of said improvements, to be distributed among the owners of said improvements according to the award and determination of said arbitrators, and securing the balance to the satisfaction of said Secretary, the income of which is to be paid to the said Seneca Nation of Indians annually.

In pursuance of the indenture and treaty made at the same time, and of which the indenture was a part, the Secretary of War named Thomas C. Love, and said Ogden & Fellows named Ira Cook as such arbitrators, and they accepted and entered upon the discharge of the duties incumbent upon them under said treaty and indenture, and upon the above basis did adjudge and award that $75,000 was the proportion which the value of the two tracts, called the Buffalo Creek reservation and Tonawanda reservation, bears to the value of all the lands within all the said four tracts; and $58,768 96 as the proportion which the value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonawanda reservation, bears to the value of the improvements on all the said four tracts.

It appears that the said arbitrators were unable to award as to the amount to be paid to each individual Indian for his improvements upon the Tonawanda reservation, for the reason that the band of Indians called the Tonawanda band, residing upon said tract and belonging to the Seneca Nation, forcibly prevented the making of the surveys and examinations requisite thereto, but that said arbitrators so far discharged their duties in relation to the said Tonawanda reservation, as to adjudge and award that the entire value of all the improvements on the reservation was the sum of $28,000, and did award for all the improvements on said reservation the proportionate sum of $15,018 36, but were by the acts of said Indians so prevented from a full performance and discharge of their duties.

It further appears that the said arbitrators made a second unsuccessful attempt to discharge their duties in March, 1844, but were taken by the arm and led off the reservation; and on the second day of January, 1849, the said Thomas C. Love, without having awarded as to the amount to be paid to each individual Indian for his improvements upon the Tonawanda reservation, tendered his resignation to the honorable the Secretary of War as such arbitrator, and on the seventh day of February, 1849, Horace Gay, esquire, was appointed such arbitrator in the place of the said Thomas C. Love.

It also appears that the report of said Thomas C. Love and Ira

Cook as such arbitrators, was duly filed in the office of the Secretary of the Department of War in March, 1844.

Ogden & Fellows caused to be deposited in the Bank of Commerce in New York, to the credit of the Treasurer of the United States for the use of said States, the sum of $75,000, being the amount awarded to be the consideration money payable to the Seneca Nation of Indians, as the value, exclusive of the improvements thereon, of the two tracts, called the Buffalo Creek and the Tonawanda reservation. They also deposited in like manner the further sum of $15,018 36, being the sum awarded for Indian improvements upon the Tonawanda reservation.

It further appears that the said Horace Gay and Ira Cook did, on the 16th day of February, 1849, repair to the Tonawanda reservation, and there met the chiefs and headmen, and requested permission personally to examine and have the improvements belonging to each individual Indian surveyed, and to communicate such facts and information, and afford such facilities as would enable them to make a just award as to the amount to be paid each owner out of the sum of $15,018 36, which request was declined, and a deliberate purpose expressed to resist by force all entries upon their lands for such purpose.

That on the sixth day of March, 1849, said Gay and Cook again repaired to the town of Alabama, near said reservation, and remained in session four days, and then and there heard and took proofs of and concerning the improvements of the several Indian owners on said reservation, and of their quality, quantity, and value, of which meeting said chiefs and headmen had notice.

That some few of the Indians appeared upon said occasion, but declined to furnish proofs in respect to their improvements, or any of the others of said Indians.

That said Gay and Cook did, by their said award, adjudge and determine the several sums to be paid to each individual Indian upon said reservation, for the value of his or her improvements; and such award was by an order made by the then Secretary of War directed to be deposited and filed without affecting the rights of the parties interested in said treaty or award, or determining whether it be or be not conformable to the agreement of parties, but simply to comply with a formality which seems to be a prerequisite to the exercise of the rights of the parties, or to their determination by judicial authority.

On the 26th June, 1851, Hon. Benjamin Pringle was duly appointed agent by his excellency President Fillmore, under the treaty of 1842, to pay over the value of the improvements upon said Tonawanda reservation to each Indian upon proof of a formal surrender of the lands and improvements described in the report and award of said Gay and Cook, which was filed in the office of the Secretary of the Department of War on the twenty-second day of February, 1851.

It was admitted that after the making of the award in 1844, up to the time of the making of the award by Gay and Cook some Indians had made new improvements upon the tract. That there had also been some transfers of improvements during the same time among the Indians by death or otherwise.

The first point presented and urged in the case is that the county judge has no jurisdiction, inasmuch as the act of 1821 is an unconstitutional act.

The case of McCollum Exparte, in 1st Cowen's Reports, page 564, clearly establishes the doctrine "that before the courts will deem it their duty to declare an act of the Legislature unconstitutional, a case must be presented in which there can be no rational doubt." This, in my opinion, is not such a case. The State of New York acquired the government, sovereignty, and jurisdiction over these lands by cession from Massachusetts, hence its power to legislate in relation to them. Again, the courts have recognized the act of 1821 as operative, and have repeatedly adjudicated under it, and I am of the opinion that it cannot be deemed invalid or unconstitutional. See 11th Paige, 607, Story vs. Waterman. It is a part of the acknowledged jurisdiction of the courts to interpose for the protection of the Indians, and I am unable to see how they are to enjoy their possessions free from the rapacity of the white man, unless it be by some such salutary provision as the act of 1821 contains.

This is the very case intended by the Legislature in its passage to be reached. The persons complained of are persons other than Indians or missionaries. The fact of the settlement as well as residence is admitted.

The evidence is plain that the lands upon which the respondents have settled belong to, or are, have been, and continue to be, occupied by a band of Indians called the Tonawandas, who compose a part of the Seneca Nation.

The respondents claim title under Ogden & Fellows, derived from Fellows as survivor, who base their title upon the treaty and indenture. This title is controverted upon the ground that the treaty and indenture were procured by fraud, and that the conditions therein contained were never complied with by Ogden & Fellows, inasmuch as the value of the individual improvements was never appraised separately as required. In answer to this, it is urged that the treaty was made with the United States, and not with the Tonawanda band of Indians; that the execution of a treaty is purely a political question, and the courts have nothing to do with it. The counsel for the respondents insisting, as they do, that the treaty has been solemnly made and complied with, forget that by article six of the Constitution of the U. S., treaties when so made become the supreme law of the land, or they would not so insist. And how questions arising under such treaties can be regarded otherwise than purely legal, I am unable to conceive. For the pur-

poses of this decision, it is not necessary, nor shall I pass upon the question of fraud. Suffice it to say, that the chiefs of the Tonawanda band, thirteen in number, were present, and refused to become parties to the contract, and insisted that they would not sell their lands, of which the grantors of the respondents had notice.

However, in order to enforce the treaty and indenture, in October, 1842, Thomas C. Love was appointed by the Secretary of War arbitrator, and entered upon the discharge of the duties pertaining thereto, and, together with Ira Cook, appraised the lands upon the reservation, but not the value of the improvements of each individual Indian upon the Tonawanda reservation separately, but only the value of the whole of such improvements; caused their award to be filed; and said Love, conceiving his powers spent, so informed the Secretary, and resigned; and more than six years having elapsed, on the seventh day of February, 1849, the Secretary appointed Horace Gay in his place. This presents the second and more important question in the case. By what authority was Horace Gay appointed by the Secretary?

The treaty or indenture contained no power of substitution; the only thing provided for was a disagreement of the arbitrators, in which case an umpire might be called in. Under what provision is it, then, that an arbitrator is discharged after having exercised a part of the duties, or rather discharged his duties imperfectly, and another substituted? The power given by the treaty and indenture is simply to name an arbitrator, and is limited.

The Secretary is the agent of one of the contracting parties for such purpose, and when he has once exercised the power given him, the arbitrator accepting and entering upon the discharge of his duties, though imperfectly done, as in this case, he becomes *functus officio*, and I am clearly of the opinion that the appointment of Horace Gay was without authority under the treaty and indenture, and that the award made by him and Ira Cook has no force or validity as against even the Seneca Nation, and cannot therefore affect the Tonawada band of Indians, and that the filing thereof was properly qualifiedly made, if to be filed at all. Upon this question the case in the 6th of East., page 309, is cited by counsel, and decides "that the authority of an umpire is spent after an award made, and he cannot alter it by substituting another sum." So in 8th East., page 54, the court hold "that when an arbitrator's authority has been once completely exercised pursuant to the terms of the reference, it is at an end, and could not be revived again, even for the purpose of correcting a mistaken calculation in figures."

To the same point reference may be had to Watson on Arbitration and Award, marginal paging 100, 104, 137, 179, 195, 198, 217, 230, 243, 279. Also 38th vol. Law Library, 4th series, pages 135, 250, 253.

It is said that Messrs. Ogden & Fellows were prevented from fulfilling the contract upon their part by one of the contracting parties, to wit, the Tonawanda Indians, and therefore are excused. Wherefore is this? Ogden & Fellows took upon themselves the employment of surveyors and the payment of the expenses of appraisal with full knowledge of the protest of the chiefs and headmen of the Tonawanda band of Indians, and their contract was with the headmen and chiefs of the Seneca Nation. How, then, can it be that the interference of the Tonawandas should discharge them from their part of the contract in this particular? It cannot have any more effect than the intermeddling of any other stranger, even upon their view of the case.

They claim title as derived from the Seneca Nation by virtue of the treaty and indenture, and are estopped from denying the title of their grantors, and through them claim possession, but not having complied with the condition precedent contained in the treaty and indenture, are not entitled to the possession, hence the respondents claiming under them are, in my opinion, intruders, and the application made to me for my warrant to remove them is granted.

EDGAR C. DIBBLE, *County Judge.*

Dated August 1, 1853.

And hereupon the process thereof is continued between the parties aforesaid of the plea aforesaid, in this same court, before the justices thereof, until the third Monday of January, 1854, at the court-house, in the city of Buffalo, in the county of Erie. The same day is given to the parties aforesaid, at the same place. And hereupon the said relators put in their place H. I. Glowacki, their attorney, and the said judge puts in his place Wakeman & Bryan, his attorneys. And at the day and place last aforesaid, come the parties aforesaid, by their respective attorneys aforesaid, and because the said supreme court now here is not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties of the plea aforesaid, in this same court, until the first Monday of March, 1854, at the court-house in the city of Rochester. The same day is given to the parties aforesaid, at the same place. At which day and place last mentioned, before the aforesaid justices, come the parties aforesaid, by their respective attorneys aforesaid, and because the said supreme court now here is not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties of the plea aforesaid, in this same court, until the third Monday of May, 1854, at the court-house in the city of Buffalo. The same day is given to the parties aforesaid, at the same place. And at the day and place last aforesaid, come the parties aforesaid, by their respective attorneys aforesaid, and because the said supreme court is not yet advised what judgment to give of and upon the premises, therefore the process thereof is con-

tinued between the parties aforesaid, in this same court, until the first Monday of September, 1854, at the court-house in Batavia, in the county of Genesee. The same day is given to the parties aforesaid, at the same place. At which day and place last mentioned, before the aforesaid justices, come the parties aforesaid, by their respective attorneys aforesaid. And the justices aforesaid, now here, having seen all and singular the premises, and fully understood the same, and mature deliberation being thereupon had, it seemeth to the said court now here before the said justices, that the adjudication and determination of the said Edgar C. Dibble, county judge of the county of Genesee, are in all respects manifestly good and valid in the law. Therefore it is considered that the said adjudication and determination of the said county judge be, and hereby are, in all things affirmed, and anything in the said writ of certiorari to the contrary thereof in any wise notwithstanding.

And it is further ordered and adjudged by the said court, that the said Edgar C. Dibble, county judge of the county of Genesee, do recover against the said Asa Cutler, John Underhill, junior, and Arsa Underhill, the relators, the sum of eighty-three dollars and fifty-eight cents, costs and damages adjudged to the said Edgar C. Dibble, county judge, for his costs and charges laid out and expended in and about defending the said writ of certiorari, and that he have execution therefor.

Judgment signed this 18th day of October, 1854.

M. G. SOPER, *Clerk.*

Filed 18th October, 4 o'clock p. m.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the Capitol, in the city of Albany, on the 16th day of October, in the year of our Lord one thousand eight hundred and fifty-seven, before the judges of said court. Witness, Hiram Denio, esquire, chief judge.

[L. S.]

R. F. HICKS, *Clerk.*

THE PEOPLE EX. REL. ASA CUTLER, and others, appellants,
agt.
Edgar C. Dibble, county judge, &c., respondent.

Be it remembered, that on the 23d day of October, in the year of our Lord one thousand eight hundred and fifty-four, the appellants in this action came here into the court of appeals by Henry I. Glowacki, attorney and counsel, and filed in the said court their notice of appeal and return thereto from a judgment of the supreme court. And the respondent in said action afterwards appeared in

said court of appeals by Wakeman & Bryan, his attorney and counsel, which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed. Whereupon, the said court of appeals, after having heard this action argued by Mr. J. L. Brown & J. L. Talcott, counsel for the appellants, and by Mr. J. H. Martindale, counsel for the respondent, and after due deliberation having been had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed. And it was further ordered and adjudged that the respondent recover against the appellants his costs of appeal in this court, and also interest on the amount of the judgment of the supreme court, by way of damages for the delay and vexation caused by the bringing of the appeal in this action. It was also ordered that the record and proceedings be remitted to the Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect; which said costs and damages are now here adjusted and fixed at the sum of one hundred and ninety-five dollars. And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

R. F. HICKS, *Clerk.*

COURT OF APPEALS, CLERK'S OFFICE,
Albany, Oct. 21, 1857.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached.

R. F. HICKS, *Clerk.*

Filed November 18th, 1857, 12 m.

Supreme Court of the United States, of the term of December, in the year of our Lord one thousand eight hundred and fifty-seven.

THE PEOPLE OF THE STATE OF NEW YORK ex relatione Asa Cutler, Arza Underhill and John Underhill, junior, plaintiffs in error,

vs.

Edgar C. Dibble, county judge of the county of Genesee, defendant in error.

Afterwards, to wit, on the first Monday of December, in this

same term, before the Supreme Court of the United States, come the said Asa Cutler, Arza Underhill and John Underhill, junior, by Henry I. Glowacki, their attorney, and say, that in the record and proceedings aforesaid and also in giving the judgment aforesaid, there is manifest error, in this, to wit: that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said Edgar C. Dibble, county judge of the county of Genesee, against the said Asa Cutler, Arza Underhill and John Underhill, junior; whereas by the law of the land the said judgment ought to have been given for the said Asa Cutler, Arza Underhill and John Underhill, junior, against the said Edgar C. Dibble, county judge of the county of Genesee.

There is also error in this, to wit: that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said Edgar C. Dibble, county judge of the county of Genesee, against the said Asa Cutler, Arza Underhill and John Underhill, junior, and in violation and disregard of the respective titles of the said Asa Cutler, Arza Underhill and John Underhill, junior, to, and their respective actual possessions and right of possession of, and residence upon the several lots and possessions upon the tract of land called the Tonawanda Reservation, by them respectively possessed and occupied as granties of Joseph Fellows, survivor of Thomas S. Ogden, under and by virtue of the said treaty of the United States of May 20th, 1842, in the record and proceedings aforesaid mentioned and referred to, whereas by the true construction of the said treaty, the said respective lots and possessions on said tract of land by the said Asa Cutler, Arza Underhill, and John Underhill, junior, respectively occupied and possessed, were upon the facts disclosed in the record aforesaid, respectively the closes, soil and freeholds of them, the said Asa Cutler, Arza Underhill, and John Underhill, junior, and not of the Seneca Nation of Indians, as by the record aforesaid is supposed; and they, the said Asa Cutler, Arza Underhill, and John Underhill, junior, were respectively entitled under the treaty aforesaid, and by virtue of their respective titles derived from the said Joseph Fellows, to the full possession, occupation, and enjoyment thereof, without molestation from the said Edgar C. Dibble, county judge as aforesaid. Wherefore the said judgment should have been given in favor of the said Asa Cutler, Arza Underhill, and John Underhill, junior, against the said Edgar C. Dibble, county judge as aforesaid, and in favor of their said respective titles and possessions and not against the same as by the record aforesaid it appears to have been given.

There is also error in this, to wit: that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given in favor of the validity of the act of the legislature of the State of New York, entitled "an act respecting intrusions on Indian lands," in the said record mentioned, and for the enforce-

ment thereof by the said Edgar C. Dibble, county judge as aforesaid, against the said Asa Cutler, Arza Underhill, and John Underhill, junior, to remove them, and each and every of them, respectively, with their respective families, from their respective lots and possessions upon the said tract of land called the Tonawanda Reservation, and in violation and disregard of their respective rights and possessions acquired as grantees of the said Joseph Fellows, under the said treaty of May 20th, 1842; whereas under and by virtue of the treaty aforesaid the said Asa Cutler, Arza Underhill, and John Underhill, junior, were respectively entitled to remain and reside with their families upon their said respective possessions and lots on the said tract of land, any thing in the said act of the legislature of the State of New York to the contrary notwithstanding; wherefore the said judgment should have been given in favor of the said Asa Cutler, Arza Underhill, and John Underhill, junior, and of their aforesaid rights under the treaty aforesaid, and against the validity of the said act of the legislature of the State of New York, and against the determination and adjudication of the said Edgar C. Dibble, county judge as aforesaid, under the act aforesaid, and not in favor thereof as by the record aforesaid it appears to have been given.

There is also error in this, to wit: that by the record, proceedings, and judgment aforesaid, it appears that in giving the judgment aforesaid, there was drawn in question the validity of the said treaty of May 20th, 1842, between the United States and the Seneca Nation of Indians in said record and proceedings mentioned, and the decision was against the validity of the said treaty, and against the right and title of the said Asa Cutler, Arza Underhill, and John Underhill, junior, which they, as grantees of the said Joseph Fellows, derived from, and had, and claimed under the treaty aforesaid, whereas by the law of the land the said decision and judgment should have been in favor of the validity of the said treaty, and of the said right and title of the said Asa Cutler, Arza Underhill, and John Underhill, junior, which they, as grantees of the said Joseph Fellows, had and claimed under the treaty aforesaid, and not against the same as by the record aforesaid it appears to have been given. And the said Asa Cutler, Arza Underhill, and John Underhill, junior, pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

HENRY I. GLOWACKI,
Attorney for Plaintiffs in Error.
JOSHUA L. BROWN,
Of Counsel for Plaintiffs in Error.

Filed November 21st, 1857.

STATE OF NEW YORK,
Genesee county, ss:

I, Hiram W. Hascall, clerk of the supreme court of the State of New York, for the county aforesaid, do hereby certify to the Supreme Court of the United States, that the judgment of the court of appeals of the said State, now remaining in the supreme court of the said State, and the assignment of errors to which this certificate is annexed, are respectively true and correct transcripts from the originals remaining on file in my office; that I have compared the said transcripts with the said respective originals thereof, and they are respectively correct transcripts therefrom, and of the whole of the said originals.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said supreme court, at Batavia, in [SEAL.] said State, this 21st day of November, in the year of our Lord one thousand eight hundred and fifty seven, and of the independence of the United States the eighty-second.

Fees $17 50. H. W. HASCALL.

Joinder in Error.

Supreme Court of the United States, of the term of December, 1857.

EDGAR C. DIBBLE, COUNTY JUDGE OF the county of Genesee, defendant in error,

ads.

The people of the State of New York ex relatione Asa Cutler, Arza Underhill, and John Underhill, junior, plaintiffs in error.

And hereupon afterwards, to wit, on the first Monday in December in this same term, the said Edgar C. Dibble, county judge of the county of Genesee, defendant in error, freely comes into court here, and says there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid: and therefore he prays that the said Supreme Court before the aforesaid justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may in all things be affirmed, &c.

WILLIAM G. BRYAN,
Attorney for Defendant in Error and of Counsel.
JOHN H. MARTINDALE,
Of Counsel for Def't in Error.

Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK ex rel. Asa Cutler, John Underhill, jr., and Arza Underhill, Plaintiffs in Error, vs. EDGAR C. DIBBLE, County of Genesee *County*, Defendant in Error. } No. 60 of December Term, 1858.

It is hereby stipulated that the documents contained in the annexed printed case, (of John Blacksmith vs. Joseph Fellows and Robert Kendle,) commencing with the act of 1786, near the top of page 8, and ending with the certificate of deposit, at bottom of page 44, are correct copies at length of the documents mentioned on page 12 of the printed record in this case as having been read in evidence from the said case of Blacksmith vs. Fellows and Kendle; (and that said annexed case is a correct duplicate or copy of the said case from which said documents were so read in evidence as aforesaid.)

HENRY J. GLOWACKI,
Att'y for Pl'ffs in Error.
WAKEMAN & BRYAN,
Att'ys for Def't in Error.

Schedule A.

An Act supplementary to the act entitled "An act to appoint agents or commissioners for vindicating the right and jurisdiction of this State against the claims of the Commonwealth of the Massachusetts, pursuant to the Articles of Confederation and perpetual union of the United States."

Whereas in and by the act entitled "An act to appoint agents or commissioners for vindicating the right and jurisdiction of this State against the claims of the Commonwealth of the Massachusetts, pursuant to the Articles of Confederation and perpetual union of the United States," passed the 12th of November, 1784, James Duane, John Jay, Robert R. Livingston, Egbert Benson, and Walter Livingston, esquires, were declared to be agents for this State in the controversy between this State and the Commonwealth of the Massachusetts, as mentioned in the said act: And whereas the said John Jay and Walter Livingston have informed this legislature that they cannot attend the duties required of them by the said act, by reason of the offices they severally hold under the United States, and have requested to resign their appointments as agents in the controversy aforesaid, whereby it is become necessary that other persons be appointed in the place of the said John Jay and Walter Livingston: Therefore,

Be it enacted by the people of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the

authority of the same, That John Haring, Melancton Smith, Robert Yates, and John Lansing, junior, esquires, be, and they are hereby appointed and declared to be agents, in the place of the said John Jay and Walter Livingston, for this State in the controversy aforesaid. And in order that the said controversy may be brought to a speedy issue,

Be it further enacted by the authority aforesaid, That the said James Duane, Robert R. Livingston, Egbert Benson, John Haring, Melancton Smith, Robert Yates, and John Lansing, junior, or such of them as shall attend the trial of the controversy aforesaid, at the federal court appointed to determine the same, have a credit on the treasury for a sum not exceeding four thousand pounds, to be paid them by the treasurer of this State on account.

And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said James Duane, Robert R. Livingston, Egbert Benson, John Haring, Melancton Smith, Robert Yates, and John Lansing, junior, or any five or more of them, to settle the said controversy between this State and the Commonwealth of the Massachusetts, otherwise than by the said federal court as mentioned in the said act, in such manner as they shall judge most conducive to the interest of this State.

Passed Council of Revision April 28, 1786.

Schedule B.

To all to whom these presents shall come:

The underwritten John Lowell, James Sullivan, Theophilus Parsons, and Rufus King, agents or commissioners appointed by the Commonwealth of Massachusetts, of the one part, and the underwritten James Duane, Robert R. Livingston, Robert Yates, John Haring, Melancton Smith, and Egbert Benson, six of the agents or commissioners appointed by the State of New York, of the other part, send greeting:

Whereas the Commonwealth of Massachusetts did heretofore present a petition to the United States in Congress assembled, thereby, among other things, stating that all that territory which in the said petition is described as all that part of New England, in America, which lieth and extendeth between a great river, called Merrimack, and a certain other river there, called Charles river, being the bottom of a bay there, called Massachusetts bay, and also all those lands lying within three English miles to the southward of the southernmost part of the said bay, and extending thence northward in latitude to northward of every part of the said river Merrimack, and in breadth of latitude aforesaid extending throughout all the main land, in longitude westwardly to the southern ocean, was the just and proper right of the said Commonwealth; and further stating that the State of New York had set up a claim to some part of the land before mentioned; the said Com-

monwealth did, therefore, by the said petition, solemnly request of the United States in Congress that commissioners might be appointed for inquiring into and determining upon the claim aforesaid of the legislature of the said Commonwealth, and that such other proceedings respecting the premises might be had as are by the federal government of the United States, in such case made and provided, as by the said petition, filed among the archives of the United States, reference being thereunto had, may more fully appear: And whereas the State of New York doth, in opposition to the said claim of the Commonwealth of Massachusetts, claim as the just and proper right of the said State, as well in respect of property as jurisdiction, all those lands and territories bounded on the north by the parallel of latitude passing through the said point, place, or boundary aforesaid of three miles to the northward of every part of the said river Merrimack; and bounded on the south by the parallel of latitude passing through the said point or place, situate three miles south of the southernmost part of said bay called Massachusetts bay; bounded on the west by the limits between the United States and the King of Great Britain and the line of cession from the State of New York to the United States; and bounded on the east by the line agreed on and established between the late colony of the Massachusetts bay and the late colony of New York, in the year one thousand seven hundred and seventy-three, and from the northern termination of the said line; then bounded on the east by the west bank of the Connecticut river: And whereas the State of New York, having been duly notified, did appear by their lawful agents to vindicate such their said right against the said claim of the said Commonwealth, and proceedings were thereupon had in Congress, pursuant to the Articles of Confederation, in order to the appointment of commissioners or judges to constitute a court for hearing and determining the said matters in question. And whereas the said John Lowell, James Sullivan, Theophilus Parsons, and Rufus King were afterwards, by a certain commission, under the seal of the said Commonwealth, and bearing date the twenty-sixth day of April, in the ninth year of the independence of the United States, and made in pursuance of an act of the legislature of the said Commonwealth, passed the fourteenth day of March, in the eighth year of the independence of the United States, and of a resolution of the said legislature, passed the eighteenth day of the said month of March, commissioned to be agents to manage, conduct, and prosecute the claims of the said Commonwealth to the lands described in the said petition: And whereas, afterwards and pending such proceedings in Congress, the legislature of the Commonwealth of Massachusetts did, by an act entitled An act empowering the agents appointed by their government to defend the territory on the west side of Hudson's river against the

claims of the State of New York to settle the controversy relative thereto otherwise than by a federal court, if they shall judge it expedient, enact that the major part of the said agents or commissioners should be fully authorized and empowered to agree with the agents or commissioners of the State of New York, and settle the controversy respecting the territory aforesaid by a federal court, as appointed by virtue of the Confederation, or otherwise, in such way and manner as they should judge would comport with justice and the interest of the said Commonwealth; and the legislature of the State of New York did, by an act entitled "An act supplementary to the act entitled An act to appoint agents or commissioners for vindicating the right and jurisdiction of this State against the claims of the Commonwealth of Massachusetts, pursuant to the Articles of Confederation and perpetual union of the United States," among other things, enact that it should be lawful for the said James Duane, Robert R. Livingston, Egbert Benson, John Haring, Melancton Smith, and Robert Yates, and also John Lansing, jun., or any five or more of them, to settle the said controversy between the said State of New York and the said Commonwealth of Massachusetts otherwise than by the said federal court in such manner as they should judge most conducive to the interest of the said State, as by the said commission and the said several acts, relation being thereunto had, may appear:

Now, therefore, know ye that the underwritten commissioners on the part of the Commonwealth of Massachusetts and the State of New York, respectively, having, by mutual consent, assembled at the city of Hartford, in the State of Connecticut, on the thirtieth day of November last, in order to the due execution of their respective trusts, and having duly exchanged and considered their respective powers, and declared the same legal and sufficient, after several conferences, and to the end that all interfering claims and controversies between the said Commonwealth of Massachusetts and the said State of New York, as well in respect of jurisdiction as property, may be finally settled and extinguished, and peace and harmony forever established between them on the most solid foundation, have agreed, and by these presents do, mutually, for and in behalf of the said Commonwealth of Massachusetts and the said State of New York, by whom, respectively, they, the said commissioners, have been so appointed and authorized as aforesaid, agree to the mutual cessions, grants, releases, and other provisions following, that is to say:

First. The Commonwealth of Massachusetts doth hereby cede, grant, release, and confirm to the State of New York forever all the claim, right, and title which the Commonwealth of Massachusetts hath to the government, sovereignty, and jurisdiction of the lands and territories so claimed by the State of New York, as hereinbefore stated and particularly specified.

Secondly. The State of New York doth hereby cede, grant, release, and confirm to the Commonwealth of Massachusetts, and to the use of the Commonwealth, their grantees, and the heirs and assigns of such grantees, forever, the right of pre-emption of the soil from the native Indians, and all other the estate, right, title, and property (the right and title of government, sovereignty, and jurisdiction excepted) which the State of New York hath of, in, or to two hundred and thirty thousand and four hundred acres, to be located by the Commonwealth of Massachusetts, and to be situate to the northward of and adjoining to the lands granted, respectively, to Daniel Cox and Robert Lettice Hooper, and their respective associates, and between the rivers Oswego and Chenango; and also of, in, or to all the lands and territories within the following limits and bounds, that is to say: beginning in the north boundary line of the State of Pennsylvania, in the parallel of forty-two degrees of north latitude, at a point distant eighty-two miles west from the northeast corner of the State of Pennsylvania, on the Delaware river, as the said boundary line hath been run and marked by the commissioners appointed by the States of Pennsylvania and New York, respectively; and from the said point or place of beginning, running on a due meridian north to the boundary line between the United States of America and the King of Great Britain; thence, westerly and southerly, along the said boundary line, to a meridian which will pass one mile due east from the northern termination of the strait or waters between Lake Ontario and Lake Erie; thence south, along the said meridian, to the south shore of Lake Ontario; thence on the eastern side of the said strait, by a line always one mile distant from the parallel, to the said strait, to Lake Erie; thence due west to the boundary line between the United States and the King of Great Britain; thence along the said boundary line until it meets with the line of cession from the State of New York to the United States; thence, along the said line of cession, to the northwest corner of the State of Pennsylvania; and thence east, along the northern boundary line of the State of Pennsylvania, to the said place of beginning. And which said lands and territories, so ceded, granted, released, and confirmed, are parcel of the land and territories described in said petition.

Thirdly. The Commonwealth of Massachusetts doth hereby cede, grant, release, and confirm to the State of New York, and to the use of the State of New York, their grantees and the heirs and assigns of such grantees forever, the right of pre-emption to the soil from the native Indians, and all other the estate, right, title and property, which the Commonwealth of Massachusetts hath of, in or to the residue of the lands and territories so claimed by the State of New York as hereinbefore stated, and particularly specified.

Fourthly. That the lands so ceded, granted, released, and confirmed to the Commonwealth of Massachusetts, or such part thereof as shall from time to time be and remain the property of the Commonwealth of Massachusetts, shall, during the time that the same shall so be and remain such property, be free and exempt from all taxes whatsoever, and that no general or State tax shall be charged on, or collected from, the lands hereafter to be granted by the Commonwealth of Massachusetts, or on the occupants or proprietors of such lands, until fifteen years after such confirmation as is hereinafter mentioned of such grants shall have expired; but that the lands so to be granted, and the occupants thereof, shall, during the said period, be subject to town or county charges or taxes only: Provided, that this exemption from general or State taxes shall not be construed to extend to such duties, excises or imposts, to which the other inabitants of the State of New York shall be subject and liable.

Fifthly. That no rents or services shall be reserved in any grants to be made of the said lands by the Commonwealth of Massachusetts.

Sixthly. That the inhabitants of the said lands and territories, being citizens of any of the United States, holding by grants from the Commonwealth of Massachusetts, shall be entitled to equal rights with the other citizens of the State of New York; and further, that the citizens of the Commonwealth of Massachusetts shall from time to time, and at all times hereafter, have and enjoy the same and equal rights respecting the navigation and fishery on and in Lake Ontario and Lake Erie, and the waters communicating from the one to the other of the said lakes, and respecting the roads and portages between the said lakes as shall from time to time be had and enjoyed by the citizens of the State of New York, and the citizens of the Commonwealth of Massachusetts shall not be subject to any other regulations, or greater tolls or duties to be made or imposed from time to time by the State of New York respecting the premises, than the citizens of the State of New York shall be subject to.

Seventhly. That no adverse possession of the said lands for any length of time shall be adjudged a disseisin of the Commonwealth of Massachusetts.

Eighthly. That the State of New York, so long as any part of the said lands shall be and remain the property of the Commonwealth of Massachusetts, shall not cede, relinquish, or in any manner divest themselves of the government and jurisdiction of the said lands, or any part thereof, without the consent of the Commonwealth of Massachusetts.

Ninthly. That the Commonwealth of Massachusetts may from time to time, by persons to be by them authorized for the pur-

pose, hold treaties and conferences with the native Indians, relative to the property or right of soil of the said lands and territories hereby ceded, granted, released and confirmed to the Commonwealth of Massachusetts, and with such armed force as they shall deem necessary for the more effectual holding such treaty or conference; and the Commonwealth of Massachusetts, within six months after such treaties shall respectively be made, shall cause copies thereof to be deposited in the office of the secretary of the State of New York.

Tenthly. The Commonwealth of Massachusetts may grant the right of pre-emption of the whole or of any part of the said lands and territories to any person or persons, who, by virtue of such grant, shall have good right to extinguish, by purchase, the claims of the native Indians: Provided, however, that no purchase from the native Indians by any such grantee or grantees shall be valid, unless the same shall be made in the presence of, and approved by, a superintendent, to be appointed for such purpose by the Commonwealth of Massachusetts, and having no interest in such purchase; and unless such purchase shall be confirmed by the Commonwealth of Massachusetts.

Eleventhly. That the grantees of the said lands and territories under the Commonwealth of Massachusetts shall, within six months after the confirmation of their respective grants, cause such grants, or the confirmation thereof, or copies of such grants or confirmations, certified or exemplified under the seal of the Commonwealth of Massachusetts, to be deposited in the said office of the secretary of the State of New York, to the end that the same may be recorded there, and after the same shall have been so recorded the grantees shall be entitled to receive again from the said secretary their respective grants or confirmations, or the copies thereof, whichsoever may have been so deposited, without any charges or fees of office whatsoever, and every grant or confirmation which shall not, or of which copies shall not be so deposited, shall be adjudged void.

In testimony whereof the said John Lowell, James Sullivan, Theophilus Parsons, and Rufus King, for and in the name and behalf of the said Commonwealth of Massachusetts, and the said James Duane, Robert R. Livingston, Robert Yates, John Haring, Melancton Smith, and Egbert Benson, for and in the name and on behalf of the said State of New York, have to these presents, and a duplicate thereof, both indented, interchangeably set their hands, and affixed their seals. Done at the city of Hartford aforesaid, the sixteenth day of December, in the year of our Lord one thousand

seven hundred and eighty-six, and the eleventh year of the independence of the United States of America.

JOHN LOWELL,	[L. S.]
JAMES SULLIVAN,	[L. S.]
THEOPHILUS PARSONS,	[L. S.]
RUFUS KING,	[L. S.]
JAMES DUANE,	[L. S.]
ROBERT R. LIVINGSTON,	[L. S.]
ROBERT YATES,	[L. S.]
JOHN HARING,	[L. S.]
MELANCTON SMITH,	[L. S.]
EGBERT BENSON.	[L. S.]

Witnesses present at the sealing and deliver[illegible]: George Wyllys, Thomas Seymour, Jesse Root, Jeremiah Wadsworth, D. Humphreys, William Imlay, Joseph Webb, Si[illegible]e Witt, Lewis du Boys, Nathaniel Bethune.

Be it remembered, that on the thirtieth day of January, in the year of our Lord one thousand seven hundred and eighty-seven, personally appeared before me, Richard Morris, chief justice of the State of New York, Jeremiah Wadsworth and Lewis Duboys, esquires, two of the subscribing witnesses to the within instrument, who being by me duly sworn, did severally depose and say, that they were present and did see the within named James Duane, Robert R. Livingston, Robert Yates, John Haring, Melancton Smith, Egbert Benson, John Lowell, James Sullivan, Theophilus Parsons and Rufus King, severally sign, seal and deliver the within instrument, as their and each of their free and voluntary act and deed, to and for the uses and purposes therein mentioned; and that George Wyllys, Thomas Seymour, Jesse Root, D. Humphreys, William Imlay, Simeon De Witt, and Nathaniel Bethune, the other subscribing witnesses, were also present and did together with the deponents sign and subscribe their names as witnesses to the execution thereof; and I having inspected the said instrument and finding no interlineations or material erasures therein, except those noted in the body thereof, do allow the same to be recorded.

RD. MORRIS.

Schedule C.

[Senate Journal January 13, 1787.]

"A message from his excellency, the governor, was received, requiring the attendance of the Senate in the Senate chamber.

"The President accordingly left the chair, and with the Senate attended his excellency, and having re-assumed the chair, informed the Senate that his excellency, the governor, had made a speech to the legislature and presented him with a copy thereof, which being read, is in the words following, viz:

"Gentlemen of the Senate and Assembly:

"As you are now assembled in pursuance of the law for fixing the stated meetings of the legislature, the annual appointments to be made by the Senate and Assembly will of course be your first business.

"Gentlemen, I have the pleasure to inform you that the law passed at the last session of the legislature, vesting commissioners with discretionary power to determine the controversy between this State and the Commonwealth of Massachusetts, otherwise than by federal court, hath been carried into full effect, all interfering claims, both with respect to territory and jurisdiction, being finally adjusted. The mutual agreement and act of cession, executed with the usual solemnities, by the commissioners of both States, is now laid before you, and I have the fullest confidence that the conduct of your commissioners, in a mission equally difficult and important, will meet with your entire approbation, and that adequate provision will be made for the services and expenses which have arisen in laborious preparations for the trial, as well as in the final extinguishment of the contest."

[Assembly Journal, January 13, 1787.]

"A message from his excellency, the governor, was delivered by his private secretary, that his excellency requires the immediate attendance of this House in the Senate chamber.

"Mr. Speaker left the chair, and with the House attended accordingly; and having returned and re-assumed the chair, he reported to the House that his excellency had been pleased to make a speech to the legislature, and to deliver a copy thereof. The same being read, is in the following words, viz:"

[Speech same as above.]

[Senate Journal, January 17, 1787.]

"The answer of the Senate to his excellency's speech, in the words following, viz:

"The answer of the Senate of the State of New York to the speech of his excellency George Clinton, esquire, governor of the said State, general and commander in chief of all the militia, and admiral of the navy of the same.

"SIR: It gives us the highest satisfaction to find, that while by the Divine goodness we enjoy the blessings of peace and good order, the controversy between this State and the Commonwealth of Massachusetts, with respect to territory and jurisdiction, is finally determined. Suitable provisions will be made for our commissioners, whose conduct in transacting this business receives our fullest approbation."

[Assembly Journal, January 20, 1787.]

"The engrossed address to his excellency, the governor, was read, and is in the words following, to wit:

"To his excellency George Clinton, esquire, governor of the State of New York, general and commander in chief of all the militia, and admiral of the navy of the same.

"The respectful address of the Assembly, in answer to his excellency's speech at the opening of the session:

"We learn with peculiar pleasure that the measures adopted by the legislature at the last session for settling, otherwise than by a federal court, the territorial dispute between this State and the Commonwealth of Massachusetts, have been carried into full effect; and that while, through the Divine goodness, we enjoy the blessings of internal peace and order, the sources of external discord and animosity, resulting from a controverted boundary, are happily extinguished, the public tranquillity in a point of such magnitude secured, and the heavy expense of a judicial investigation avoided. The conduct of our commissioners in this delicate and important trust meets with our entire approbation, and we shall fully concur in making adequate provision for the services rendered and expenses incurred, either in preparing for trial, or towards the adjustment of the controversy."

[Assembly Journal, January 24, 1787.]

"Resolved, (if the honorable the Senate concur herein), That a committee of the honorable the Senate and a committee of this House be appointed to see the mutual agreement and act of cession executed by the commissioners on the part of this State and on the part of the Commonwealth of Massachusetts for settling the controversy lately subsisting between this State and the said Commonwealth duly proved, recorded and deposited in the office of the secretary of this State, to the end that the said agreement and act of cession so proved, recorded and deposited may remain in perpetual testimony of the matters therein contained; and in case of such concurrence, that Mr. Bayard, Mr. E. Clark, and Mr. Cantine be a committee on the part of this House for that purpose.

"Ordered, That Mr. J. Livingston deliver a copy of the last preceding resolution to the honorable the Senate."

[Senate Journal, January 25, 1787.]

"A message from the honorable the Assembly, by Mr. J. Livingston, was received, with the following resolution for concurrence, viz:

[Resolution same as above.]

"Resolved, That the Senate do concur with the honorable the Assembly in their said resolution, and that Mr. Haring and Mr.

L'Hommedieu be a committee on the part of the Senate, for the purposes therein mentioned.

"Ordered, That Mr. Swartwout deliver a copy of the preceding concurrent resolutions to the honorable the Assembly."

[Senate Journal, February 17, 1787.]

"Resolved, (if the honorable the Assembly concur herein), That in order to prevent any uneasiness which may arise in the minds of the Six Nations, from misrepresentations of the terms of the mutual agreement and act of cession lately executed between the commissioners on the part of this State, and on the part of the Commonwealth of Massachusetts, relative to the lands within this State, now held and occupied by the said Indians, it is necessary that the said agreement and act of cession be communicated and explained to them as soon as may be.

"Resolved, That his excellency the governor make such communication and explanation in person if necessary, or by such other person or persons as he shall appoint for that purpose, and that he transmit a copy of these resolutions to the executive of the Commonwealth of Massachusetts, and express as the wish of this legislature that a similar communication should also be made on the part of the said Commonwealth, at such time and place as shall be agreed on between their excellencies, the governor of this State and the governor of the Commonwealth of Massachusetts.

"Resolved, That this State will provide for the defraying the expense which may accrue on the part of this State in making such communication.

"Ordered, That Mr. Ward deliver copies of the preceding resolutions to the honorable the Assembly."

[Assembly Journal, February 19, 1787.]

"A copy of three resolutions of the honorable the Senate, delivered by Mr. Ward, was read, and is in the words following, viz:

"[Resolutions same as the last above.]

"Resolved, That this House do concur with the honorable the Senate in the said three resolutions."

Schedule D.

"Art. 3. The land of the Seneka nation is bounded as follows: beginning on Lake Ontario, at the northwest corner of the land they sold to Oliver Phelps, the line runs westerly along the lake as far as Oyongwongyeh creek, at Johnston's landing place, about four miles eastward from the Fort of Niagara; then southerly up that creek to its main fork; then straight to the main fork of Stedman's creek, which empties into the river Niagara above Fort Schlosser, and then onward from that fork, continuing the same straight course to that river, (this line from the mouth of Oyongwongyeh creek to the river Niagara above Fort Schlosser being

the eastern boundary of a strip of land extending from the same line to Niagara river, which the Seneka nation ceded to the King of Great Britain, at a treaty held about thirty years ago with Sir William Johnston;) then the line runs along the river Niagara to Lake Erie; then along Lake Erie to the northeast corner of a triangular piece of land, which the United States conveyed to the State of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that State; then due east to the southwest corner of the land sold by the Seneka nation to Oliver Phelps; and then north and northerly, along Phelps' line, to the place of beginning on Lake Ontario. Now, the United States acknowledge all the land within the aforementioned boundaries to be the property of the Seneka nation; and the United States will never claim the same, nor disturb the Seneka nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof, but it shall remain theirs until they choose to sell the same to the people of the United States, who have the right to purchase."

Schedule E.

Special Provisions for the Senecas.

Article 10. It is agreed with the Senecas that they shall have for themselves and their friends, the Cayugas and Onondagas, residing among them, the easterly part of the tract set apart for the New York Indians, and to extend so far west as to include one half section (three hundred and twenty acres) of land for each soul of the Senecas, Cayugas, and Onondagas residing among them; and if on removing west they find there is not sufficient timber on this tract for their use, then the President shall add thereto timber land sufficient for their accommodation, and they agre to remove—to remove from the State of New York to their new homes within five years, and to continue to reside there. And whereas at the making of this treaty, Thomas L. Ogden and Joseph Fellows, the assigneés of the State of Massachusetts, have purchased of the Seneca nation of Indians, in the presence and with the approbation of the United States commissioner, appointed by the United States to hold said treaty or convention, all the right, title, interest, and claim of the said Seneca nation to certain lands, by a deed of conveyance, a duplicate of which is hereunto annexed; and whereas the consideration money mentioned in said deed, amounting to two hundred and two thousand dollars, belongs to the Seneca nation, and the said nation agrees that the said sum of money shall be paid to the United States, and the United States agree to receive the same, to be disposed of as follows: the sum of one hundred thousand dollars is to be invested by the President of the United States in safe stocks for their use, the income of which is to be paid

to them at their new homes annually, and the balance, being the sum of one hundred and two thousand dollars, is to be paid to the owners of the improvements on the lands so deeded, according to an appraisement of said improvements and a distribution and award of said sum of money among the owners of said improvements, to be made by appraisers hereafter to be appointed by the Seneca nation, in the presence of a United States commissioner hereafter to be appointed, to be paid by the United States to the individuals who are entitled to the same according to said apprisal and award, on their severally relinquishing their respective possessions to the said Ogden and Fellows.

At a treaty held under the authority of the United States of America, at Buffalo Creek, in the county of Erie and State of New York, between the chiefs and headmen of the Seneca nation of Indians duly assembled in council, and representing and acting for the said nation, on the one part, and Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, on the other part, concerning the purchase of the right and claim of the said Indians in and to the lands within the State of New York remaining in their occupation—Ransom H. Gillet, esquire, a commissioner appointed by the President of the United States to attend and hold the said treaty, and also Josiah Trowbridge, esquire, the superintendent on behalf of the Commonwealth of Massachusetts, being severally present at the said treaty—the said chiefs and headmen, on behalf of the Seneca nation, did agree to sell and release to the said Thomas Ludlow Ogden and Joseph Fellows, and they, the said Thomas Ludlow Ogden and Joseph Fellows, did agree to purchase all the right, title and claim of the said Seneca nation of, in and to the several tracts, pieces, or parcels of land mentioned and described in the instrument of writing next hereinafter set forth, and at the price or sum therein specified, as the consideration or purchase-money for such sale and release; which instrument being read and explained to the said parties and mutually agreed to, was signed and sealed by the said contracting parties, and is in the words following:

This indenture, made this fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, between the chiefs and headmen of the Seneca nations of Indians, duly assembled in council, and acting for and on behalf of the said Seneca nation, of the first part, and Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, of the second part, witnesseth: That the said chiefs and headmen of the Seneca nation of Indians, in consideration of the sum of two hundred and two thousand dollars to them in hand paid by the said Thomas Ludlow Ogden and Joseph Fellows, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bar-

gain, sell, release and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, and to their heirs and assigns, all that certain tract or parcel of land situate, lying and being in the county of Erie and State of New York, commonly called and known by the name of Buffalo Creek reservation, containing, by estimation, forty-nine thousand nine hundred and twenty acres, be the contents thereof more or less. Also, all that certain other tract or parcel of land, situate, lying and being in the counties of Erie, Chautauque and Cattaraugus, in said State, commonly called and known by the name of Cattaraugus reservation, containing, by estimation, twenty-one thousand six hundred and eighty acres, be the contents thereof more or less. Also, all that certain other tract or parcel of land, situate, lying and being in the said county of Cattaraugus, in said State, commonly called and known by the name of the Allegany reservation, containing, by estimation, thirty thousand four hundred and sixty-nine acres, be the contents more or less. And also, all that certain other tract or parcel of land, situate, lying and being partly in said county of Erie and partly in the county of Genesee, in said State, commonly called and known by the name of the Tonawanda reservation, and containing, by estimation, twelve thousand eight hundred acres, be the same more or less; as the said several tracts of land have been heretofore reserved and are held and occupied by the said Seneca nation of Indians, or by individuals thereof, together with all and singular the rights, privileges, hereditaments and appurtenances to each and every of the said tracts or parcels of land belonging or appertaining; and all the estate, right, title, interest, claim, and demand of the said party of the first part, and of the said Seneca nation of Indians, of, in and to the same, and to each and every part and parcel thereof: to have and to hold all and singular the above described and released premises unto the said Thomas Ludlow Ogden and Joseph Fellows, their heirs and assigns, to their proper use and behoof forever, as joint tenants, and not as tenants in common.

In witness whereof, the parties to these presents have hereunto and to three other instruments of the same tenor and date, one to remain with the United States, one to remain with the State of Massachusetts, one to remain with the Seneca nation of Indians, and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals, the day and year first above written.

Little Johnson,	his x mark	[l. s.]
Daniel Two Guns,		[l. s.]
Captain Pollard,	his x mark	[l. s.]
James Stevenson,	his x mark	[l. s.]
Captain Strong,	his x mark	[l. s.]
Captain Snow,	his x mark	[l. s.]
Blue Eyes,	his x mark	[l. s.]

Levi Halftown,	his x mark	[l. s.]
Billy Shanks,	his x mark	[l. s.]
White Seneca,	his x mark	[l. s.]
George Bennet,	his x mark	[l. s.]
John Pierce,	his x mark	[l. s.]
John Gordon,	his x mark	[l. s.]
Jim Jonas,	his x mark	[l. s.]
William Johnson,	his x mark	[l. s.]
Reuben Pierce,	his x mark	[l. s.]
Morris Halftown,	his x mark	[l. s.]
Jacob Jimeson,	his x mark	[l. s.]
Samuel Gordon,		[l. s.]
Thompson S. Harris,		[l. s.]
George Jemison,	his x mark	[l. s.]
Nathaniel T. Strong,		[l. s.]
Tall Peter,	his x mark	[l. s.]
Tommy Jimmy,	his x mark	[l. s.]
John Tall Chief,	his x mark	[l. s.]
George Fox,		[l. s.]
Jabez Stevenson,		[l. s.]
William Jones,	his x mark	[l. s.]
George White,	his x mark	[l. s.]
By his Agent, White Seneca.		
John Snow,	his x mark	[l. s.]
Walter Thompson,	his x mark	[l. s.]
By his Agent, Daniel Two Guns.		
Long John,	his x mark	[l. s.]
John Bark,	his x mark	[l. s.]
George Lindsey,		[l. s.]
Jacob Bennet,	his x mark	[l. s.]
John Bennet,	his x mark	[l. s.]
Seneca White,	his x mark	[l. s.]
Maris B. Pierce,		[l. s.]
David White,		[l. s.]
James Shongo,	his x mark	[l. s.]
William Cass,	his x mark	[l. s.]
Samuel Wilson,	his x mark	[l. s.]
John Seneca.	his x mark	[l. s.]

Signed, sealed, and delivered in presence of—
James Stryker,
Nathaniel T. Strong, } Interpreters.
Spencer H. Cone, }
H. B. Potter,
Charles H. Allen.

At the beforementioned treaty, held in my presence, as superintendent on the part of the Commonwealth of Massachusetts, and

this day concluded, the foregoing instrument of writing was agreed to by the contracting parties therein named, and was in my presence executed by them, and being approved by me, I do hereby certify and declare such my approbation thereof.

Witness my hand and seal, at Buffalo Creek, this 15th day of January, in the year 1838.

JOSIAH TROWBRIDGE. [L. S.]

I have attended a treaty of the Seneca nation of Indians, held at Buffalo Creek, in the county of Erie, in the State of New York, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, when the within instrument was duly executed in my presence by the chiefs of the Seneca nation, being fairly and properly understood by them. I do, therefore, certify and approve the same.

R. H. GILLET, *Commissioner.*

Schedule F.

Commonwealth of Massachusetts.

On the petition of Robert Troup, Thomas L. Ogden, and B. W. Rogers, proprietors of lands in the State of New York.

Whereas, in the articles of agreement made on the sixteenth day of December, in the year one thousand seven hundred and eighty-six, between the Commonwealth of Massachusetts and the State of New York, concerning certain lands within the territorial jurisdiction of the State of New York, and whereof the State of Massachusetts had the pre-emptive right, and by which articles the rights of these States were respectively ascertained and determined, it was provided among other things as follows:

Tenthly. The Commonwealth of Massachusetts may grant the right of pre-emption of the whole or of any of the said lands and territories, to any person or persons who, by virtue of such grant, shall have good right to extinguish by purchase the claims of the native Indians, provided, however, that no purchase from the native Indians by any such grantee or grantees shall be valid, unless the same shall be made in the presence of, and approved by, a superintendent to be appointed for such purpose by the Commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the Commonwealth of Massachusetts.

Eleventhly. That the grantees of the said lands and territories under the Commonwealth of Massachusetts shall, within six months after the confirmation of their respective grants, cause such grants, or the confirmation thereof, or copies of such grants, or confirmations, certified or exemplified under the seal of the Commonwealth of Massachusetts, to be deposited in the office of the secretary of the State of New York, to the end that the same may be recorded there; and after the same shall have been so recorded, the grantees

shall be entitled to receive again from the said secretary their respective grants, or confirmations, or the copies thereof, whichsoever may have been so deposited, without any charges or fees of office whatsoever; and every grant or confirmation which shall not be so deposited shall be adjudged void:

And whereas, for the reasons above set forth, and in conformity to the said agreement between this Commonwealth and the State of New York, all deeds and grants made pursuant thereto ought to be confirmed:

And whereas Robert Troup, Thomas Ludlow Ogden, and Benjamin W. Rogers have represented that they are the purchasers of certain tracts of land which are included in the lands and territories aforesaid, and are entitled under said articles of agreement to have their purchase confirmed on the part of this Commonwealth: wherefore,

Resolved, That his excellency, the governor, by and with the consent and advice of the council, be, and he hereby is authorized and empowered to confirm the aforesaid purchase of said petitioners, provided the same shall appear to his excellency to have been made in conformity to the said articles of agreement, and also to confirm, in like manner, for and in behalf of this Commonwealth, all other purchases which have been made, or which may hereafter be made, in conformity to said articles of agreement; and to certify such confirmations in such form and manner under the seal of this Commonwealth as his excellency may think proper to carry the aforesaid articles of agreement into full effect.

In Senate January 19, 1828. Read and passed; sent down for concurrence.

JOHN MILLS, *Pres't.*

House of Representatives, January 25, 1828. Read and passed in concurrence.

WILLIAM C. JARVIS, *Spkr.*

January 26, 1828, approved.

LEVI LINCOLN.

Schedule G.

Commonwealth of Massachusetts.

To whom it may concern:

Be it known, that whereas by a resolve of this Commonwealth, passed on the twenty-sixth day of January, one thousand eight hundred and twenty-eight, the governor was authorized and empowered, by and with the advice and consent of council, to confirm, for and in behalf of the Commonwealth, a certain purchase made by Robert Troup, Thomas Ludlow Ogden, and

[L. S.]

EDWARD EVERETT.

Benjamin W. Rogers, esquires, of certain tracts of land situate in the State of New York; and also to confirm, as in and by said resolve was provided, all purchases which had then been made, or which might thereafter be made, of the claims of the native Indians, by the grantees of the State of Massachusetts, of its right of pre-emption, of the whole or any part of the territories mentioned and intended in the articles of agreement, made on the sixteenth day of December, in the year one thousand seven hundred and eighty-six, between the Commonwealth of Massachusetts and the State of New York, such purchases being made in the presence of a superintendent appointed by the said Commonwealth, and by him duly approved; and such confirmation to be certified by the governor in such form and manner as his excellency might think proper to carry the aforesaid articles of agreement into full effect:

And whereas it has been made to appear to me that by and in virtue of a certain indenture, made the fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, between the chiefs and headmen of the Seneca nation of Indians, duly assembled in council and acting for and in behalf of said Seneca nation, of the first part, and Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, on the second part, that the said Ogden and Fellows, grantees claiming under this Commonwealth, according to the aforesaid articles of agreement, are purchasers from the said Seneca nation, for the consideration of two hundred and two thousand dollars, of a tract of land situate in the county of Erie, in the State of New York, commonly known and called by the name of the Buffalo Creek reservation, containing by estimation forty-nine thousand nine hundred and twenty acres. Also all that other tract of land in the counties of Erie, Chautauque, and Cattaraugus, in said State, commonly known and called by the name of the Cattaraugus reservation, containing by estimation twenty-one thousand six hundred and eighty acres. Also a tract in the county of Cattaraugus, known by the name of the Allegany reservation, containing by estimation thirty thousand four hundred and sixty-nine acres. Also a tract partly in Erie county, and partly in Genesee county, known by the name of the Tonnawanda reservation, estimated to contain twelve thousand and eight hundred acres. All which appears by one of the four parts of said indenture remaining with the State of Massachusetts:

And whereas it also appears to me that Josiah Trowbridge, esquire, by me heretofore duly appointed to attend any such treaty for such purchases, as superintendent for this Commonwealth, did attend the treaty whereat the said indenture of purchase was made, and has duly certified his approbation thereof:

Now, therefore, I, Edward Everett, governor of the Common-

wealth of Massachusetts, do, by and with the advice and consent of the council, ratify and confirm, in behalf of this Commonwealth, the said purchase made by the said Thomas Ludlow Ogden and the said Joseph Fellows, and the said intenture of purchase executed on the said fifteenth day of January, and every clause and article of said indenture.

In witness whereof, I have caused the seal of the Commonwealth to be hereunto affixed, the twelfth day of March, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States of America the sixty-second.

By his excellency the governor, with the advice and consent of counsel.

JOHN P. BIGELOW,
Sec'y of the Commonwealth.

[*Endorsed:*]

STATE OF NEW YORK,
Secretary's Office.

Recorded in book of deeds No. 42, page 277, &c., the 11th day of September, 1838, at nine o'clock a. m.

ARCH'D CAMPBELL,
Dep. Secretary.

Schedule H.

Articles of a treaty made and concluded at Buffalo Creek, in the State of New York, on the twentieth day of May, in the year one thousand eight hundred and forty-two, between the United States of America, acting herein by Ambrose Spencer, their commissioner, thereto duly authorized on the one part, and the chiefs, headmen, and warriors of the Seneca nation of Indians, duly assembled in council, on the other part.

Whereas a treaty was heretofore concluded and made between the said United States, and the chiefs, headmen, and warriors of the several tribes of New York Indians, dated the fifteenth day of January, in the year one thousand eight hundred and thirty-eight, which treaty having been afterwards amended, was proclaimed by the President of the United States, on the fourth of April, one thousand eight hundred and forty, to have been duly ratified:

And whereas on the day of making this treaty, and bearing even date herewith, a certain indenture was made, executed, and concluded by and between the said Seneca nation of Indians and Thomas L. Ogden and Joseph Fellows, assignees under the State of Massachusetts, in the presence and with the approbation of a commissioner appointed by the United States, and in the presence and with the approbation of Samuel Hoare, a superintendent on the part of the Commonwealth of Massachusetts, which indenture is in the words and figures following, to wit:

[This treaty here sets forth the indenture, saving and *expecting* the signatures and certificates thereto.]

Therefore, taking into consideration the premises, it is agreed and stipulated by and between the United States of America and the Seneca nation of Indians as follows, to wit:

First. The United States of America consent to the several articles and stipulations contained in the last recited indenture between the said nation and the said Thomas Ludlow Ogden and Joseph Fellows above set forth.

Second. The United States further consent and agree, that any number of the said nation who shall remove from the State of New York, under the provisions of the above mentioned treaty proclaimed as aforesaid, on the fourth day of April, one thousand eight hundred and forty, shall be entitled in proportion to their relative numbers to all the benefits of the said treaty.

Third. The United States of America further consent and agree, that the tenth article of said treaty proclaimed as aforesaid, on the fourth day of April, one thousand eight hundred and forty, be deemed and considered as modified, in conformity with the provisions of the indenture herein above set forth, so far as that the United States will receive and pay the sum stipulated to be paid as the consideration-money of the improvements therein specified, and will receive, hold, and apply the sum to he paid, or the securities to be given for the lands therein mentioned, as provided for in such indenture.

In testimony whereof, the undersigned, Ambrose Spencer, commissioner on the part of the United States of America, and the undersigned, chiefs and headmen of the Seneca nation of Indians, have to two parts of this treaty, one thereof to remain with the United States, and the other thereof with the Seneca nation of Indians, set their hands and affixed their seals the day and year first above mentioned.

Schedule I.

This indenture, made and concluded between Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, of the one part, and the chiefs and headmen of the Seneca nation of Indians, on the other part, at a council duly assembled and held at Buffalo Creek, in the State of New York, on the twentieth day of May, in the year one thousand eight hundred and forty-two, in the presence of Samuel Hoare, the superintendent thereto authorized by and on the part of the Commonwealth of Massachusetts, and of Ambrose Spencer, a commissioner thereto duly appointed and authorized on the part of the United States.

Whereas at a council held at Buffalo Creek, on the fifteenth day of January, in the year one thousand eight hundred and thirty-

eight, an indenture of that date was made and executed by and between the parties to this agreement, whereby the chiefs and headmen of the Seneca nation of Indians, for the consideration of two hundred and two thousand dollars, did grant, bargain, release, and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, all those four several tracts of land, situate within the State of New York, then and yet occupied by the said nation, or the people thereof, severally described in the said indenture, as the Buffalo Creek reservation, containing by estimation forty-nine thousand nine hundred and twenty acres of land, the Cattaraugus reservation containing by estimation twenty-one thousand six hundred and eighty acres of land, the Allegany reservation containing by estimation thirty thousand four hundred and sixty-nine acres of land, and the Tonnewanda reservation containing by estimation twelve thousand eight hundred acres of land; a duplicate of which indenture was annexed to a treaty of the same date, made between the United States of America and the chiefs, headmen, and warriors of the several tribes of New York Indians assembled in council; which treaty was amended and proclaimed by the President of the United States on the fourth of April, one thousand eight hundred and forty, as having been duly ratified, as by the said indenture, treaty, and proclamation more fully appear:

And whereas divers questions and differences having arisen between the chiefs and headmen of the Seneca nation of Indians, or some of them, and the said Thomas Ludlow Ogden and Joseph Fellows, in relation to the said indenture, and the rights of the parties thereto, and the provisions contained in the said indenture, being still unexecuted, the said parties have mutually agreed to settle, compromise, and finally terminate all such questions and differences on the terms and conditions hereinafter specified:

Now, therefore, it is hereby mutually declared and agreed by and between the said parties as follows:

Article First. The said Thomas Ludlow Ogden and Joseph Fellows, in consideration of the release and agreements hereinafter contained on the part of the said Seneca nation, do, on their part, consent, covenant and agree, that they, the said nation, (the said indenture notwithstanding,) shall and may continue in the occupation and enjoyment of the whole of the said two several tracts of land, called the Cattaraugus reservation, and the Allegany reservation, with the same right and title in all things as they had and possessed therein immediately before the date of the said indenture, saving and reserving to the said Thomas Ludlow Ogden and Joseph Fellows the right of pre-emption, and all other the right and title which they then had or held in or to the said tracts of land.

Article Second. The chiefs and headmen of the Seneca nation of Indians, in consideration of the foregoing, and of the agreement next hereinafter contained, do, on their part, grant, release, and

confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, and to their heirs and assigns, in joint tenancy, the whole of the said two tracts of land, severally called the Buffalo Creek reservation and the Tonnewanda reservation, and all the right and interest therein of the said nation.

Article Third. It is mutually agreed between the parties hereto that in lieu of the sum expressed in the said indenture, as the consideration of the sale and release of the said four tracts of land, there shall be paid to the said nation a just consideration sum for the release of the two tracts hereby confirmed to the said Ogden and Fellows, to be estimated and ascertained as follows:

The present value of the Indian title to the whole of the said four tracts of land, including the improvements thereon, shall for all the purposes of this present compact be deemed and taken to be two hundred and two thousand dollars, of which sum one hundred thousand dollars shall be deemed to be the value of such title in and to all the lands within the said four tracts exclusive of the improvements thereon, and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts, and of the said sum of one hundred thousand dollars the said Ogden and Fellows shall pay to the Seneca nation such proportion as the value of all the lands within the said two tracts called the Buffalo Creek and Tonnewanda reservations shall bear to the value of all the lands within all the said four tracts, and of the said sum of one hundred and two thousand dollars the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts shall bear to the value of the improvements on all the said four tracts.

Article Fourth. The amount of the consideration moneys to be paid in pursuance of the last preceding article shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows, which arbitrators, in order to such judgment and award, and to the performance of the other duties hereby imposed on them, may employ suitable surveyors to explore, examine, and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity in determining the amount of the said consideration money.

The same arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which, on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonnewanda reservation; and in case the said arbitrators shall disagree as to any of the matters hereby submitted to them, they may choose an umpire, whose decision theron shall be final and conclusive; and the said

arbitrators shall make a report in writing of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded, one of such reports to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows.

Article Fifth. It is agreed, that the possession of the two tracts hereby confirmed to the said Ogden and Fellows, shall be surrendered and delivered up to them as follows, viz: The forest or unimproved lands on the said tracts, within one month after the report of the said arbitrators, shall be filed in the office of the Department of War, and the improved lands within two years after the said report shall have been so filed: Provided always, that the amount to be so ascertained and awarded, as the proportionate value of the said improvements, shall, on the surrender thereof, be paid to the President of the United States, to be distributed among the owners of the said improvements, according to the determination and award of the said arbitrators in this behalf: And provided further, that the consideration for the release and conveyance of the said lands shall, at the time of the surrender thereof, be paid or secured to the satisfaction of the said Secretary of the War Department, the income of which is to be paid to the said Seneca Indians annually.

But any Indian having improvements may surrender the same, and the land occupied by him and his family, at any time prior to the expiration of the said two years, upon the amount awarded to him for such improvements being paid to the President of the United States, or any agent designated by him for that purpose, by the said Ogden and Fellows, which amount shall be paid over to the Indian entitled to the same, under the directions of the War Department.

Article Sixth. It is hereby decreed and declared to be the understanding and intent of the parties hereto, that such of the said Seneca nation as shall remove from the State of New York, under the provisions of any treaty, made or to be made, between the United States and the said Indians, shall be entitled in proportion to their relative numbers to the funds of the Seneca nation, and that the interest and income of such their share and proportion of the said funds, including the consideration money to be paid to the said nation in pursuance of this indenture, and of all annuities belonging to the said nation, shall be paid to the said Indians so removing at their new homes, and whenever the said tracts called the Alleghany and the Cattaraugus reservations, or any part thereof, shall be sold and conveyed by the Indians remaining in the State of New York, the Indians so removing shall be entitled to share in the proceeds of said sales in the like proportion. And it is further agreed and declared, that such Indians owning improvements in

the Cattaraugus and Alleghany tracts as may so remove from the State of New York, shall be entitled on such removal, and on surrendering their improvements to the Seneca nation for the benefit of the nation, to receive the like compensations for the same, according to their relative values, as in the third and fourth articles of this treaty are stipulated to be paid to the owners of improvements in the Buffalo Creek and Tonnewanda tracts, on surrendering their improvements; which compensations may be advanced by the President of the United States, out of any funds in the hands of the government of the United States belonging to the Seneca nation, and the value of these improvements shall be ascertained and reported by the arbitrators to be appointed in pursuance of the fourth article.

Article Seventh. This indenture is to be deemed to be in lieu of, and as a substitute for the above recited indenture, made and dated the fifteenth day of January, one thousand eight hundred and thirty-eight, so far as the provisions of the two instruments may be inconsistent or contradictory, and the said indenture, so far as the same may be inconsistent with the provisions of this compact, is to be regarded and is hereby declared to be rescinded and released.

Article Eighth. All the expenses attending the execution of this indenture and compact, including those of the arbitration and surveys hereinbefore referred to, and also those of holding the treaty now in negotiation between the United States and the said Seneca nation, except so far as may be provided for by the United States, shall be advanced and paid by the said Ogden and Fellows.

Article Ninth. The parties to this compact mutually agree to solicit the influence of the government of the United States to protect such of the lands of the Seneca Indians, within the State of New York, as may from time to time remain in their possession, from all taxes, and assessments for roads, highways, or any other purpose, until such lands shall be sold and conveyed by the said Indians, and the possession thereof shall have been relinquished by them.

In witness whereof, the parties to these presents have hereunto, and to three other instruments of the same tenor and date, one to remain with the United States, one to remain with the *the* State of Massachusetts, one to remain with the Seneca nation of Indians, and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals the day and year first and above written.

T. L. OGDEN, [L. S.]
JOSEPH FELLOWS. [L. S.]

	Marks.	
Ten-wan-ne-us, or Governor Blacksnake,	X	[l. s.]
Joh-nesh-ha-dih, or James Steveson,	X	[l. s.]
Ho-wah-tan-oh-goh, or John Pierce,	X	[l. s.]
Da-gon-on-de, or William Patterson,	X	[l. s.]
Sam'l Gordon,		[l. s.]
Tunis Halftown,		[l. s.]
Hau-sa-nea-nes, or White Seneca,	X	[l. s.]
Gah-nang-ga-eot, or Young Chief,	X	[l. s.]
Thomas Jimeson,		[l. s.]
Nuh-joh-gau-eh, or Tall Peter,	X	[l. s.]
John Kennedy, jr.,		[l. s.]
Tit-ho-yah, or William Jones,	X	[l. s.]
Saul Logan,		[l. s.]
Gau-geh-gruh-doh, or George Jimeson,	X	[l. s.]
N. T. Strong,		[l. s.]
Jabez Stevenson,		[l. s.]
Hau-neh-hoy-soh, or Blue Eyes,	X	[l. s.]
Samuel Wilson, or Ni-ge-jos-a,	X	[l. s.]
William Krouse,		[l. s.]
Joseph Silverheels,		[l. s.]
Da-o-as-sah-aw, or Jo Hemlock,	X	[l. s.]
George Fox,		[l. s.]
Yaw-saw-ge, or Peter Johnson,	X	[l. s.]
Noh-sok-dah, or Jim Jonas,	X	[l. s.]
Deh-no-se-da, or Jacob Shongo,	X	[l. s.]
John Kennedy,	X	[l. s.]
Abram John,	X	[l. s.]
Job Pierce,	X	[l. s.]
Dao-nepho-gah, or Little Johnson,	X	[l. s.]
Jo-on-da-goh, or John Seneca,	X	[l. s.]

Ho-no-yea-os, or Jacob Bennett,	X	[l. s.]
George Turkey,		[l. s.]
Daniel Two Guns,		[l. s.]
Goat-hau-oh, or Billy Shanks,	X	[l. s.]
James Pierce,		[l. s.]
Gi-eut-twa-geh, or Robert Watt,	X	[l. s.]
Thompson S. Harris,		[l. s.]
Sah-goh-en-toh, or Morris Halftown,	X	[l. s.]
Seneca White,		[l. s.]
Gosh-u-aw, or James Shongo,	X	[l. s.]
Adam Doxtader, or Ti-ot-tah-co,	X	[l. s.]
James Spring,		[l. s.]
Maris B. Pierce,		[l. s.]
So-gooh-quas, or John Tall Chief,	X	[l. s.]
Moses Stevenson,		[l. s.]
Jonah Armstrong,	X	[l. s.]
George Deer, or Saw-da-ne,	X	[l. s.]
Ga-na-waa, or John Cook,	X	[l. s.]
Isaac Halftown,	X	[l. s.]
David Snow,	X	[l. s.]
John Bark,	X	[l. s.]
George Killbuck,	X	[l. s.]
George Dennis,	X	[l. s.]
Gaw-ne-es, or John Dickey,	X	[l. s.]
George Big Deer.	X	[l. s.]

Signed, sealed and delivered in the presence of—the words "hereby" and the words "and Allegany" in the fifth page being interlined—

A. DIXON,
Com'r on the part of New York.

BENJ. FERRIS,
O. H. MARSHALL,
ORLANDO ALLEN,
ASHER WRIGHT,
ELAM R. JEWETT,
CORTLAND B. STEBBINS,
JOSEPH. S. WATTON.

Having, as superintendent on the part of the Commonwealth of Massachusetts, attended the negotiation of a treaty or contract beween Thomas Ludlow Ogden and Joseph Fellows, of the one part, and the chiefs and headmen of the Seneca nation of Indians of the other part, held at Buffalo Creek, in the State of New York, and concluded this twentieth day of May, in the year 1842, I do hereby certify, that the foregoing instrument of writing, after being fully explained to the said chiefs and headman, convened in council, was voluntarily agreed to and signed and executed by them in my presence, and I hereby approve the said instrument and all the matters therein contained.

SAMUEL HOAR.

COMMONWEALTH OF MASSACHUSETTS,
City of Boston, ss.

I, Lemuel Shaw, chief justice of the supreme judicial court, do hereby certify that on the thirtieth day of March, A. D. 1846, personally appeared before me Samuel Hoar, of said Commonwealth, to me known to be the person described in and who subscribed his name to the within certificate, and the said Samuel Hoar acknowledged that he executed the same.

LEMUEL SHAW,
Ch. Just. Sup. Jud. Court of Mass'ts.

I have this day attended a treaty with the Seneca nation of Indians, held at Buffalo Creek, in the State of New York, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-two, when the within and preceding instrument was duly executed in my presence between Thomas Ludlow Ogden and Joseph Fellows, of the one part, and the chiefs and headmen of the said nation on the other part, the same having been fairly understood and explained to them, and I do hereby certify and declare my full approbation thereof.

A. SPENCER,
A Comm'r on the part of the United States.

STATE OF NEW YORK,
Wayne County, ss.

I, De Witt Parshall, do hereby certify, that on the third day of April, 1846, personally appeared before me Ambrose Spencer, of said county, to me known to be the person of that name described in and who subscribed his name to the within certificate, and the said Ambrose Spencer acknowledged that he executed the same.

DE WITT PARSHALL,
Supreme Court Com'r for Wayne county.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss.

On this 14th day of October, 1845, came before me Orlando Allen, to me known, who being by me duly sworn, says that he resides in the city of Buffalo; that he is acquainted with the within named, Thomas L. Ogden, Governor Blacksnake, Little Johnson, James Stevenson, John Pierce, William Patterson, Samuel Gordon, Tunis Halftown, White Seneca, Young Chief, Thomas Jimeson, Tall Peter, John Kennedy, jr., William Jones, Saul Logan, George Jimeson, Nathaniel T. Strong, Jabez Stevenson, Blue Eyes, Samuel Wilson, William Krouse, John Seneca, Jacob Bennett, George Turkey, Daniel Two Guns, Billy Shanks, James Pierce, Robert Watt, Thompson S. Harris, Morris Halftown, Seneca White, James Shongo, Adam Doxtader, James Spring, Maris B. Pierce, John Tall Chief, Moses Stevenson, Jonah Armstrong, Joseph Silverheels, Jo Hemlock, George Fox, Peter Johnson, Jim Jonas, Jacob Shongo, John Kennedy, Abram John, Job Pierce, George Deer, John Cook, Isaac Halfiown, David Snow, John Bark, George Killbuck, George Dennis, John Dickey, and George Bigdeer, and knows them to be the same persons described in and who executed the within instrument; that he saw them severally execute the same, and that he, said Allen, subscribed his name thereto as a witness of such execution, which is to me satisfactory proof of the due execution of said instrument by said persons in this certificate above named. At the same time appeared before me Joseph Fellows, to me known to be one of the persons described in and who executed the within instrument, and acknowledged that he executed the same for the uses and purposes therein mentioned.

H. S. CUTTING,
Cm'r of Deeds for the City of Buffalo.

STATE OF NEW YORK,
Erie County, ss.

I, Manly Colton, clerk of the county of Erie, and of the court of common pleas thereof, do hereby certify that H. S. Cutting, esq., whose name is subscribed to the annexed certificate of proof or acknowledgment, and thereon written, was at the time of taking the same a commissioner of deeds in said county, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of said H. S. Cutting, and verily believe the signature to said certificate to be his genuine signature.

In testimony whereof I have hereunto set my name and affixed the seal of the said court and county, this 24th day of February, 1846.
[L. S.]

MANLY COLTON, *Clerk.*

Schedule K.

The Commonwealth of Massachusetts.

To all whom it may concern, greeting:

Whereas on the twentieth day of May now last past, an indenture, a copy whereof is set forth in the annexed document, was duly signed and executed between Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, of the county of Ontario, in the State of New York, on the one part, and the chiefs and headmen of the Seneca nation of Indians on the other part, at a council duly assembled and held at Buffalo Creek, in the State of New York, by and in virtue of which indenture the said Ogden and Fellows are confirmed as purchasers of certain tracts of land therein specified and described:

[L. S.]

JOHN DAVIS.

And whereas the said indenture was executed in the presence and with the approval of Samuel Hoar, a commissioner on the part of this Commonwealth, and of Ambrose Spencer, a commissioner on the part of the United States, a copy of the approval of each of whom is also duly set forth in the annexed document; and whereas the Senate of the United States and the President thereof have duly ratified the said instrument as a treaty:

Now, therefore, be it known that we, by our governor and council, do hereby confirm the purchase made by said Ogden and Fellows, by and under the provisions of the indenture aforesaid.

In testimony whereof, we have caused our great seal to be hereunto affixed this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-third.

By his excellency the governor, with the advice and consent of the council.

JOHN P. BIGELOW,
Secretary of the Commonwealth.

[*Endorsed on the back:*]

STATE OF NEW YORK,
Secretary's Office.

Recorded in Book of Deeds No. 42, page 491, &c., the 24th day of October, 1842.

ARCH'D CAMPBELL,
Dep. Sec. of State.

Schedule L.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
15*th Oct.*, 1842.

THOMAS C. LOVE,
Clarence, Erie Co., N. Y.

SIR: The fourth article of the treaty of the 20th May last, with

the Seneca nation of Indiana, provides for the appointment of two arbitrators to perform certain duties connected with the execution of said treaty; one of these is to be appointed by the Secretary of War, the other by Messrs. Ogden and Fellows, and in case of a disagreement a third, or umpire, to be chosen by the two thus appointed.

You have been selected to perform this duty on the part of the United States, in connection with Ira Cook, esq., named by the other party, and I proceed to give you such instructions as are deemed necessary.

The third article of the treaty stipulates that "the present value of the Indian title to the whole of the four tracts of lands, including the improvements thereon, shall for all the purposes of the present compact be deemed and taken to be $202,000, of which sum $100,000 shall be deemed to be the value of such title in and to all the lands within the said four tracts, exclusive of the improvements thereon, and $102,000 to be the value of all the improvements within the said four tracts, and of the said sum of $100,000 the said Ogden and Fellows shall pay to the Seneca nation such portion as the value of all the lands within the said two tracts called the Buffalo Creek and Tonawanda reservations shall bear to the value of all the lands within all the said four tracts, and of the said sum of $102,000 the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts shall bear to the value of the improvements on all the said four tracts."

The duty assigned to you and your colleague therefore is to place a relative value upon the land after a critical examination of it, and also to value the improvements upon the four tracts, to enable you to estimate the relative value of those upon the two tracts. To enable you to execute this duty the fourth article provides for the employment of suitable surveyors to explore, examine, and report on the value of said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity in determining the amount of the said consideration money.

The 4th article also provides that the same arbitrators shall award and determine the amount to be paid to each individual Indian out of the sum which, on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek and Tonawanda reservations. In the execution of this duty you will make tabular lists of those Indians who are owners of improvements on the Buffalo Creek and Tonawanda reservations, placing opposite each name their value, and the like course will be pursued in reference to the improvements on the two reservations that remain to the Indians. You will also keep a correct record of all

your proceedings, and make a report in writing in duplicate, to be acknowledged or proved according to the laws of New York, in order to their being recorded, one of which reports to be filed in the War Department, and the other to be delivered to Ogden and Fellows.

The sixth article of the treaty provides that Indians owning improvements in the Cattaraugus and Allegany tracts (being those retained by the Indians) who may remove from the State of New York, shall be entitled on such removal and on surrendering their improvements to the Seneca nation, for the benefit of the nation, to receive the like compensation for the same according to their relative values as in the 3d and 4th articles to be paid to the owners of improvements in the other two reservations in surrendering their improvements, which compensation may be advanced by the President of the United States out of any fund in his hand belonging to the Seneca nation, and the value of their improvements shall be ascertained and reported by the arbitrators under the 4th article.

In the execution of this trust, it will be necessary for you to make a personal examination of the whole of the four reservations, and give such instructions to the surveyors as you may find necessary, the appointment of a sufficient number of whom is left to yourself and your colleague, at a compensation usual in that country for such service, to be defrayed by Messrs. Ogden & Fellows.

It will, in like manner, be necessary for you to visit each improvement, and estimate the value of whatever may, in your opinion, add value to the lands, designating in tabular lists, to be made, as before stated, for that purpose, the particular species and number or quantity of property, such as houses, fences, fruit trees, &c., &c., &c., and these lists will be appended to and form a part of your report.

Your compensation will be made by Messrs. Ogden & Fellows, to whom you are referred on that subject, and it is not doubted they will put it on a footing entirely satisfactory to you. You will communicate with your associate, Ira Cook, esq., at Byron, Genesee Co., New York, and fix as early a day as conveniently practicable for entering upon your duties.

A copy of these instructions has been sent to Messrs. Ogden & Fellows.

Very respectfully, your ob't serv't,
T. HARTLEY CRAWFORD,

WAR DEPARTMENT,
Office Indian Affairs, June 3d, 1843.

THOMAS C. LOVE, Clarence, Erie Co., New York:

SIR: The instructions addressed to you on the 15th October last it is not proposed in any substantial particular to change; but the

Secretary of War has instructed me to advise you, that in his opinion, the labors of yourself and associate will be much facilitated by employing surveyors to ascertain the extent of cleared land and the value of the various kinds of improvements they shall find on each farm—as many surveyors as you may think it expedient to employ with a view to the greatest expedition. One or more on each reservation might be engaged at the same time, who should report to you in a tabular or other convenient form, after which, your own inspection might be more close, though it would be necessary still that you should see each habitation and farm, &c.; but, with the report of the surveyor before you, notes could be made that would enable you to do justice, and the time and labor be saved that must otherwise be spent by you in making the detailed statements that the surveyor would furnish; nor will the expense which is to be paid by Messrs. Ogden & Fellows be increased by the mode of proceeding suggested, as the time will be proportionably shortened.

Very respectfully, your ob't serv't,

T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, June 3d, 1843.

IRA COOK, Esquire, Byron, Genesee Co., New York:

SIR: The instructions addressed to Thomas C. Love, esq., on the 15th October last, to which you were referred in my communication of 23d ultimo, it is not proposed in any substantial particular to change; but the Secretary of War has instructed me to advise you, that in his opinion, the labors of yourself and associate will be much facilitated by employing surveyors to ascertain the extent of cleared land and the value of the various kinds of improvements they shall find on each farm, as many surveyors as you may think it expedient to employ, with a view to the greatest expedition. One or more on each reservation might be engaged at the same time, who should report to you in a tabular or other convenient form, after which, your own inspection might be less close, though it would be necessary still that you should see each habitation and farm, &c.; but, with the report of the surveyor before you, notes could be made that would enable you to do justice, and the time and labor be saved that must otherwise be spent by you in making the detailed statements that the surveyor would furnish; nor will the expense which is to be paid by Messrs. Ogden & Fellows be increased by the mode of proceeding suggested, as the time will be proportionably shortened. In my letter to you of 23d ultimo I omitted to say, as was done to Mr. Love, when appointed, that your compensation will be made by Messrs. Ogden & Fellows, to whom you are referred on that subject; and it is not

doubted that they will put it on a footing entirely satisfactory to you.

Very respectfully, your ob't serv't,
T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, September 23d, 1843.

Messrs. T.C. LOVE and IRA COOK, Buffalo, (care of Stephen Osborne:)

GENTLEMEN: The enclosed report, as you will perceive, was drawn from this office by a letter from T. L. Ogden, esq., and will explain my views on the subject of your duties as appraisers, which are fully concurred in by the Secretary of War, who directs that a copy be sent to you for your government. You will be pleased, therefore, to adopt it as instructions to yourselves, and carry out all that it contains with as much energy and expedition as you can bring to bear on the various points.

Very respectfully, your ob't serv't,
T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, September 14th, 1843.

Hon. J. M. PORTER, Secretary of War:

SIR: The letter of Thomas L. Ogden, esq., of New York, to me, of 5th instant, which was referred to the Secretary of War, has been returned to this office for a report, Mr. Ogden referring to the fact that certain Seneca emigrants had gone into possession of portions of the Buffalo Creek reservation, under an arrangement between the pre-emptors and the Seneca Indians, in anticipation of the regular surrender under the treaty, complains that the Seneca settlement is subject to great annoyance, and says, (in which I do not doubt he is correct,) "that no effectual remedy can be provided for these evils, nor for those which this company are suffering in the destruction of their timber, except in the speedy consummation of the treaty;" that is, in completion of the appraisement by the arbitrators appointed under the 4th article of the treaty of May, 1842, and to subsequent surrender, according to the terms of the compact.

Mr. Ogden complains not of the arbitrators, Thomas C. Love and Ira Cook, esquires, but of the system of examination of improvements and lands preparatory to an appraisement thereof, which they have adopted, as likely to prevent the completion of their duty during this year, which is further endangered by "feeble health of Judge Love."

The 5th article of the treaty provides for the surrender of the forest or unimproved lands on the Buffalo Creek and Tonawanda reservations, "within one month *of* the report of the arbitrators

shall be filed in the office of the Department of War, and the improved lands within two years after the said report shall have been so filed." It will be thus seen that the investigation and report of the appraising arbitrators is a preliminary step to any other action whatever under the treaty.

A correspondence between Messrs. Ogden and Fellows and the department, resulted in instructions to Messrs. Love and Cook, on the 3d June last, of which I send a copy. The object was to expedite as much as possible the performance of their duties by the arbitrators, and the letter of instruction was draughted after conversation with you, and in fact some of the suggestions in it originated with yourself. Nor do I see how they could be more plainly directed to make all the haste that consisted with doing justice to the Indians and the pre-emptors. Mr. Ogden, referring to the said instructions and the course of proceeding pointed out in them, says: "I therefore respectfully suggest to you the propriety of more precise instructions to the arbitrators to adopt and pursue it steadily as a necessary means of accomplishing during the present season an object essential to the interests of all concerned."

Although I do not clearly perceive how more definite directions can be given, still being anxious, and thinking that Messrs. Ogden and Fellows have a right to expect that the work alluded to will be d[illegible] as soon as may be conveniently practicable, it might be proper to press upon the arbitrators more urgently than heretofore the necessity that exists for the examination and appraisement at an early day, and that this season ought on no account to pass without its completion, if it be possible to effect it.

The gentleman upon whom this duty devolves should in my opinion employ as many judicious surveyors as can be usefully engaged in the unappraised reservations. These persons could be all at work at the same time, under oath if you choose so to direct, in preparing tabular statements and such descriptions of the improvements and land, for the arbitrators, as would enable the latter very soon to close their labors, and this without any expense additional to Messrs. Ogden and Fellows, who bear it all. Thus the necessity for winding up the treaty covenants on all sides. The interests of the Senecas, who cannot advance in improvement until permanently fixed on the Cattaraugus and Alleghany reservations, and justice to the pre-emptors, or their alienees, whose timber will be the prey of Indian and white depredators until possession is changed, alike require. And this is the more necessary because the department can take no steps other than it has to arrest the depredations complained of. The Senecas have no right to cut the timber to sell, nor to leave the land to others for such a purpose; but the occupants and the owners of the fee simple are subject to the laws of the State of New York, to which either can resort in enforcement of their rights. The department can do

nothing beyond exerting persuasive means with the Senecas, and these have been used until they are exhausted.

Very respectfully, yours,

T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, December 5th, 1843.

THOMAS C. LOVE and IRA COOK, Esqs., New York:

GENTLEMEN: I have received your communication of 23d October, covering a written paper addressed by the chiefs of the Tonawanda reservation in New York to Judge Love, informing that the arbitrators would not be permitted to enter upon the reservation to appraise the land and improvements.

I have amidst the present press of business incident to the commencement of the session of Congress not answered your letter, because on the subject to which your letter refers the Senecas residing on the Tonawanda reservation had been written to over and over again, and the opinion of the department as strongly expressed as language enabled it to do, that the Tonawanda reservation belonged, before the treaty of 1838, to the whole Seneca nation, by a part of which it was occupied, and that whatever disposition was made of it, by that treaty and the subsequent one of 1842, bound the whole nation of Senecas. This is undoubtedly true. The Indians on that reservation have an interest in the proportion their number bears to the whole tribe in the Alleghany and Cattaraugus reservations, and will receive their share of the value that shall be put upon the Buffalo and Tonawanda reservations. The latter they must not only allow you to value, but they must give up the possession of it according to the treaty of 1842, and move on one of the retained reservations.

There is no possible alternative. The treaty binds them and it binds the United States, and must be executed; any course but quiet submission to its terms will be destructive to the Tonawandas and Senecas.

I send you an extract from a communication I made on the 25th June, 1842, to Jemmy Johnson and John Blacksmith, the same men who addressed you, offering opposition to your proceedings, and other chiefs on the Tonawanda reservation, giving them in very decided terms the views of the department.

I would recommend that you proceed immediately to the reservation, and having convened the Tonawanda chiefs, lay before them this letter, as well as the extract sent, and inform them that it makes no difference whether they signed the treaty of 1842 or not, and that although not one of them put his name to it, they and all of the Tonawanda Indians are as much bound as if every man of them had signed the treaty of 1842, as well as that of 1838, and will therefore allow you to proceed in your duty, and

prepare to yield the possession according to the treaty. I have to-day written to the Tonawanda chiefs also.

Very respectfully, your obedient servant,

T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, July 6th, 1844.

STEPHEN OSBORNE, Esq., Buffalo, New York:

SIR: The treaty concluded with the Seneca nation of Indians on the 20th May, 1842, after conveying to Ogden and Fellows their whole interest in the two tracts known as the Buffalo Creek and Tonawanda reservations, (2d article,) and after establishing in its 3d article a basis for the ascertainment of the consideration that the grantees are to pay, proceeds in these words:

"Article 4th. The amount of the consideration-moneys to be paid in pursuance of the last preceding article shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows," &c., &c. "The said arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which, on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonawanda reservation," &c., &c., &c. "And the said arbitrators shall make a report in writing of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded, one of such reports to be filed in the office of the Secretary of the War Department, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows."

The awards of such arbitrators have been made, and the reports thereof delivered as prescribed. The stipulation of the above article having thus been fully carried out, the only step yet to be taken by the department, as preliminary to the surrender of the Indian property to its assignees, is the appointment of an agent to receive and pay over to each Indian entitled his proportion of the consideration money as determined by the arbitrators; such an agent is provided for in the 5th article, as will be seen by the following extracts:

"Article 5th. It is agreed the possession of the two parts hereby confirmed to the said Ogden and Fellows shall be surrendered and delivered up to them as follows, viz: The forest and unimproved land on the said tract, within one month after the report of the said arbitrators, shall be filed in the office of the Department of War, and the improved lands within two years after the said report shall have been so filed: Provided, always, that the amount

to be so ascertained and awarded, as the proportionate value of the said improvements, shall, on the surrender thereof, be paid to the President of the United States, to be distributed among the owners of the said improvements, according to the determination and award of the said arbitrators," &c., &c., &c.

"But any Indian having improvements may surrender the same, and the land occupied by him and his family, at any time prior to the expiration of the said two years, upon the amount awarded to him for such improvements being paid to the President of the United States, or any agent designated by him for that purpose, by the said Ogden and Fellows, which amount shall be paid over to the Indian entitled to the same, under the direction of the War Department." The duty is a very plain one, and falls in so naturally with those which your present office ordinarily imposes, that it has not been thought necessary or consistent with a proper economy to charge any one not already in the service with it, and I am instructed by the Secretary of War to inform you that it has been assigned to you.

You will, therefore, take prompt steps to give publicity amongst the Indians to this appointment, as it is important that any desiring to surrender their property should know that there is now an agent duly authorized to pay the consideration, and that no impediment to their removal longer exists. A copy of so much of the arbitrators' report as shows the amount of money awarded to each Indian accompanies this communication, and you will see that the payment tendered to, and received by, the Indian corresponds in every case with this record. It will be proper to take all the receipts (specifying in the usual form the objects of the payment) in triplicate, one to be sent to the department, one for Messrs. Ogden and Fellows, and one to be retained for yourself. It is not anticipated that there will be any necessity for you to travel about the reservation in the prosecution of this business, it being thought that it will be sufficient to announce yourself as prepared at your subagency to act for the Indian; but should any such travelling be unavoidable, the actual expense thereof will be allowed you, payable as per 8th article of treaty, by Ogden and Fellows.

Very respectfully, your ob't serv't,

T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, August 29th, 1844.

STEPHEN OSBORNE, Esq., Sub-agt., Buffalo, New York:

SIR: A letter received at this office from Messrs. Ogden and Fellows of the 24th inst., makes complaint of your refusal to receive certain sums of money offered to you by them for the value of improvements under the treaty with the Senecas.

It is a source of regret to the department that there seems to be

no end to the perplexities and vexations arising out of the execution of the treaty with those Indians; you, as the agent of the government, are bound to receive the approved value of the improvements of even a single tract of land, and the surrender should be made simultaneously with the payment of the value thereof. There can be no possible objection to your receiving the money, and retaining it until satisfactory evidence is shown in regard to the surrender of the improvements. This is the intent and meaning of the treaty, and with the right disposition there should be no trouble about it. You will, therefore, please act accordingly.

Very respectfully, your ob't serv't,

T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, September 20, 1844.

S. OSBORNE, Esq., Buffalo, New York:

SIR: I have the honor to acknowledge the receipt of your letter of the 16th inst., relative to the receipt of payments for the Senecas, according to the awards made them for their improvements.

The department cannot give more explicit orders on this subject than those contained in the letters of this office to you the 29th and 30th ultimo, (the receipt of which you acknowledge,) except that you shall receive yourself the money for each Indian improvement instead of the Indian, and hold it as his trustee until otherwise instructed by the department.

This is done in order that the Indian may not squander the sum he is entitled to, and that you may be able, if required, to pay him in instalments, or lay it out in improvements on the land to which the Indian intends removing. The treaty expressly provides that the money shall be paid direct to the government, and not to the Indian who is to receive the same from the United States. It can make no difference to Messrs. Ogden and Fellows.

Very respectfully, your ob't serv't,

T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, October 18, 1844.

T. L. OGDEN, Esq., now at Buffalo, New York:

SIR: I received your letter of 12th September last with its enclosures, and again your communication of 12th inst., requesting an answer to the former. It is true the Secretary of War was absent as you suppose, but after what I had written to sub-agent Osborne on the 29th August last, and communicated to you, and after having addressed him further on the 20th September ult., which I think was communicated to some one on your behalf at my office, I did not suppose any specific answer to your communication was required, nor do I now see how I could vary the instructions advantageously, or that any measure could be adopted by the depart-

ment, beyond which it has already done, unless indeed it would be to remove Mr. Osborne as agent, or at least to appoint some one else to receive money from you for Indian improvements. I sent copies of the letters to Mr. Osborne above referred to.

The 5th article of the treaty provides the Indians shall surrender their improved lands within two years after the report of appraisements shall be filed in the War Department, but that any Indian may surrender his improvements at any time prior to the expiration of said two years, "upon the amount awarded to him for such improvements being paid to the President of the United States, or any agent designated by him for that purpose by the said Ogden and Fellows," to be paid over to the Indian under the direction of the War Department.

It is manifest, therefore, that the money ought not to be paid to the Indian according to the treaty, and it is certain that if it is he will not have a cent of it in a few days; whereas if it be paid to him as the department shall direct, it may be made useful in establishing him on the retained reservations. These considerations induced me to amend the instructions of 29th August by those of 20th September.

If the Indians come forward and are willing to surrender their improvements to you on payment of their appraised value, it is Mr. Osborne's duty to receive such value, and hold it subject to the further orders of the department, according to the treaty and his instructions. It must be, however, a simple payment of the entire amount in money, involving no settlement of accounts or claims. Mr. Osborne professes entire willingness to obey his instructions, and I cannot but imagine there must be some want of proper disposition, or there could be no difficulty. The United States, you are fully aware, are only a party to receive the amounts due the Indians, as their trustee. The State laws, and if necessary the State courts, must do the rest.

I have conversed with the Secretary of War, who is unwilling to censure Mr. Osborne by appointing another person to this particular duty, much less to remove him from his sub-agency.

I shall send him a copy of this letter, and hope you will move on harmoniously, at least so far as the United States are to perform a purely ministerial duty clearly marked out by the treaty by which they must be governed.

Very respectfully, your ob't serv't,

T. H. CRAWFORD.

WAR DEPARTMENT,
Office Indian Affairs, October 19, 1844.

STEPHEN OSBORNE, Esq., Sub-agent, Buffalo, New, York:

SIR: I enclose you a copy of a letter, dated 18th October inst.,

to Thos. L. Ogden, esq., in answer to communication from him of 21st September and 12th inst. It contains the sentiment of the department, (heretofore communicated to you,) which as hitherto enjoined you will regard as instructions to you.

Very respectfully, your ob't serv't,

T. H. CRAWFORD.

Schedule M.

Whereas at a council held at Buffalo Creek, in the State of New York, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-two, an indenture of that date was made and executed by and between Thomas L. Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, of the one part, and the chiefs and headmen of the Seneca nation of Indians in council duly assembled in the presence of Samuel Hoare, the superintendent thereto authorized and appointed by and on the part of the Commonwealth of Massachusetts, and of Ambrose Spencer, a commissioner thereto duly appointed and authorized on the part of the United States, by which said indenture the said parties thereto, among other things, made and entered into certain releases, covenants and agreements, relative to the sale and conveyance by the said chiefs and headmen of the Seneca nation, to the said Thomas L. Ogden and Joseph Fellows, of those four several tracts of land situate in the State of New York, then and yet occupied by the said nation or the people thereof, and severally described in the said indenture as the Buffalo Creek reservation, the Cattaraugus reservation, the Allegany reservation, and the Tonnawanda reservation, a portion of the third article of which said indenture is in these words, viz:

"The present value of the Indian title to the whole of the said four tracts of land, including the improvements thereon, shall for all the purposes of this present compact be deemed and taken to be two hundred and two thousand dollars; of which sum one hundred thousand dollars shall be deemed to be the value of such title, in and to all the lands within the said four tracts, exclusive of the improvements thereon, and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts; and of the said sum of one hundred thousand dollars the said Ogden and Fellows shall pay to the Seneca nation such proportion as the value of all the lands within the said two tracts, called the Buffalo Creek and Tonnawanda reservations, shall bear to the value of all the land within all the said four tracts, and of the said sum of one hundred and two thousand dollars the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts shall bear to the value of the improvements on all the said four tracts."

And the fourth article of which said indenture is in these words viz:

"The amount of the consideration moneys to be paid in pursuance of the last preceding article shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows, which arbitrators in order to such judgment and award, and to the performance of the other duties hereby imposed on them, may employ suitable surveyors to explore, examine, and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity, in determining the amount of the said consideration money.

"The same arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which, on the principles above stated, they shall ascertain and award to be the proportional value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonnewanda reservation; and in case the said arbitrators shall disagree as to any of the matters hereby submitted to them, they may choose an umpire, whose decision thereon shall be final and conclusive; and the said arbitrators shall make a report in writing of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded, one of such reports to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows." Which said indenture is recited and incorporated in a certain treaty of the same date made between the United States of America on the one part, and the chiefs, headmen, and warriors of the Seneca nation of Indians, duly assembled in council, on the other part, which treaty was proclaimed by the President of the United States on the twentieth day of August, in the year of our Lord one thousand eight hundred and forty-two, as having been duly ratified and confirmed, as by the said indenture, treaty and proclamation, more fully appear.

And whereas the undersigned Thomas C. Love, of the city of Buffalo, Erie county, New York, (late of the town of Clarence, in the said county,) and Ira Cook of the town of Byron, Genesee county, New York, have been duly named, constituted, and appointed the arbitrators contemplated by the above recited fourth article of the said indenture, the said Thomas C. Love by the Secretary of the War Department of the United States, and the said Ira Cook by the said Ogden and Fellows, and have performed and discharged the duties imposed upon them as such arbitrators so far forth as was in their power to do:

Now, therefore, pursuant to the provisions of the said fourth article of the said indenture, the undersigned, the arbitrators aforesaid, do hereby report as follows, viz:

That they have this day agreed upon all the matters in and by the said indenture submitted to them the said arbitrators.

That they have personally, and by the aid of suitable surveyors employed for that purpose, thoroughly examined and explored the said tracts of land described as the Buffalo Creek reservation, the Cattaraugus reservation, and the Allegany reservation, and all the improvements upon each of them, and have ascertained the contents of each of said three tracts of land last named.

That said tract of land described as the Buffalo Creek reservation contains forty-nine thousand nine hundred and twenty acres.

That the tract of land described as the Cattaraugus reservation contains twenty-one thousand seven hundred and sixty-seven acres.

That said tract of land described as the Allegany reservation contains twenty-nine thousand two hundred and thirty-eight acres and eighty-three one-hundredths of an acre.

That the schedule marked "A" and entitled "A schedule of the improvements on the Buffalo Creek reservation," which is signed by said arbitrators, and is annexed hereto and made a part hereof, contains a full, true, and particular description of every improvement upon said tract of land described as the Buffalo Creek reservation, the value of each of said improvements, the name of the individual Indian owning each of said improvements, the entire value of all the improvements owned by each individual Indian, and the amount to be paid to each individual Indian for such improvements out of the sum which the undersigned arbitrators have ascertained and awarded to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonnewanda reservation as hereinafter contained.

That the schedule marked B, and entitled "A schedule of the improvements on the Cattaraugus reservation," which is signed by the said arbitrators, and is annexed hereto and made a part hereof, contains a full, true, and particular description of every improvement upon said tract of land described as the Cattaraugus reservation, the value of each of said improvements, the name of the individual Indian owning each of said improvements, and the entire value of all the improvements owned by each individual Indian.

That the schedule marked C, and entitled "A schedule of the improvements on the Allegany reservation," which is signed by the said arbitrators, and is annexed hereto and made a part hereof, contains a full, true, and particular description of every improvement upon said tract of land described as the Allegany reservation, the value of each of said improvements, the name of the individual

Indian owning each of said improvements, and the entire value of all the improvements owned by each individual Indian.

That they have determined, adjudged, and awarded, and they the said arbitrators do hereby determine, adjudge, and award that of the sum of one hundred thousand dollars, which, in and by the said fourth article of the said indenture, is deemed to be the value of the Indian title to all the lands within the said four tracts, exclusive of the improvements thereon, the said Ogden and Fellows shall pay to the said Seneca nation the sum of seventy-five thousand dollars as the proportion which the value of all the lands within the said two tracts called the Buffalo Creek reservation and the Tonnewanda reservation bears to the value of all the lands within all the said four tracts.

That they have determined, adjudged, and awarded, and they the said arbitrators do hereby determine, adjudge, and award that of the sum of one hundred and two thousand dollars, which, in and by the said fourth article of the said indenture, is deemed to be the value of all the improvements within the said four tracts, the said Ogden and Fellows shall pay to the said Seneca nation the sum of fifty-eight thousand seven hundred and sixty-eight dollars and ninety-six cents, as the proportion which the value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonnewanda reservation bears to the value of the improvements on all the said four tracts.

That they have determined, adjudged, and awarded, and they the said arbitrators do hereby determine, adjudge, and award that the amount to be paid to each individual Indian named in the aforesaid schedule marked A is the sum which in the said schedule marked A is set opposite his or her name as the amount to be paid to him or her for his or her improvements out of the said sum of fifty-eight thousand seven hundred and sixty-eight dollars and ninety-six cents, which the undersigned arbitrators have so as aforesaid ascertained and awarded to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonnewanda reservation.

That the said arbitrators have faithfully, and to the utmost of their power and ability, endeavored fully to perform and discharge the duties imposed upon them as such arbitrators in relation to the Tonnewanda reservation and the improvements thereon, but that they have been forcibly prevented from such full performance and discharge of their said duties by the action of that portion of the said Seneca nation which occupies the said Tonnewanda reservation.

That on the twenty-second day of October last they the said arbitrators repaired to the said Tonnewanda reservation, accompanied by suitable surveyors, for the purpose of exploring and examining the same and the improvements thereon, pursuant to the provisions of the said fourth article of the said indenture; that

having been informed from credible sources that that portion of the Seneca nation residing on the said Tonnewanda reservation had determined not to permit the arbitrators to go upon that reservation and discharge their duties as such arbitrators, they the arbitrators called a council of that portion of the Seneca nation residing on that reservation, which council assembled at the council-house on said reservation, and was composed of the chiefs and headmen, and a very large majority (and nearly all) of the said portion of the Seneca nation residing on said reservation; that the said arbitrators, as fully as it was in their power, explained to the said council the provisions and obligations of the aforesaid indenture and treaty, the rights and duties of the parties thereto, and particularly of the Seneca nation, under said treaty and indenture, their character and duties as such arbitrators, and the object of their coming; that the said arbitrators also used every means in their power to persuade them to permit the said arbitrators to proceed and discharge their duties upon that reservation, and to furnish the necessary information and assistance for that purpose; that the said council, with unanimous voice and action, absolutely and unconditionally refused to permit the said arbitrators to explore or examine the said reservation or any part thereof, or to ascertain or value the improvements thereon, or any of them, or to perform any act in discharge of their duties as such arbitrators in relation to that reservation, and directed the said arbitrators to leave the said reservation, which the said arbitrators accordingly did.

That the said arbitrators forthwith reported to the Secretary of the War Department of the United States their attempt to discharge their duties as such arbitrators in relation to the said Tonnewanda reservation, and the result of such attempt as above set forth. That in reply thereto the said Secretary of the War Department instructed the said arbitrators to make a further attempt to discharge their duties in relation to the said Tonnewanda reservation, and for that purpose to convene another council of that part of the said Senaca nation residing on that reservation, and make further efforts to secure their consent to and aid in the performance by the said arbitrators of their duties in relation thereto. That in pursuance of such instructions the said arbitrators, on the twenty-seventh day of December last, again repaired to the said Tonnewanda reservation, and again convened a council of that portion of the Seneca nation residing on that reservation, which council forthwith assembled at the council-house on said reservation, and was composed of the chiefs and headmen, and a very large majority (and nearly all) of that part of the Seneca nation residing on the said Tonnewanda reservation; that the said arbitrators communicated to the said council the said instructions so as aforesaid received by them from the Secretary of the War Depart-

ment, and accompanied the same with a renewed and full explanation of the provisions and obligations of the aforesaid indenture and treaty, the rights and duties of the Seneca nation under it, the duties of the arbitrators, and the object of their coming, and the opinion of the arbitrators, of the consequences to that portion the Seneca nation residing on the Tonnewanda reservation of a continued refusal on their part to permit the discharge of their duties by such arbitrators in relation to that reservation, and to give the necessary information and assistance for that purpose. That the said arbitrators again used every means in their power to prevail upon the said council to abandon their opposition to the discharge by the said arbitrators of their duties in relation to the said Tonnewanda reservation, and to co-operate with them in such discharge of their duties, that the said council again with unanimous resolution absolutely refused to permit the said arbitrators to do any act upon that reservation in discharge of their duties in relation thereto. That the said arbitrators then declared their intention to proceed to discharge their said duties notwithstanding the resolution of the council, and gave notice that they would then proceed to ascertain and value the improvements of any individual Indian on the said reservation who would give his or her name, point out his or her improvements, and give the necessary information relative to the same. That the declaration and notice by the arbitrators produced a violent excitement in the council, and the arbitrators were told that unless they immediately withdrew from said reservation they would be carried by force without the bounds thereof; and thereupon the said arbitrators were each taken by the arm by a chief, and accompanied by him and warriors off the said reservation. That by the means and manner above set forth, the said arbitrators have been prevented from exploring or examining the said Tonnewanda reservation, or the improvements thereon, or any of them; therefore they cannot determine the amount to be paid to any individual Indian out of the sum which they have, as aforesaid, ascertained and awarded to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonnewanda reservation, and that it would have been impossible for them, the said arbitrators, to have performed this portion of their duties in relation to the Tonnewanda reservation without information from and the active aid and co-operation of the individual Indian residing on that reservation. That by the aid of previous surveyors of the said tract called the Tonnewanda reservation, of the accuracy of which the said arbitrators entertain no doubt, they have found and estimated that it contains twelve thousand eight hundred acres of land. That having been in the manner and by the means above set forth prevented from ascertaining by personal examination and surveys what were the improvements on the said tract called the Tonnewanda reservation, or

the value of such improvements, or any particulars in relation thereto, they, the said arbitrators, have from the best information they could obtain estimated and set down, and they do hereby estimate and set down the entire value of all the improvements on that reservation at the sum of twenty-eight thousand dollars, and do hereby award for all the improvements on said reservation, the proportionate sum of fifteen thousand and eighteen dollars and thirty-six cents, as appears in Schedule D, hereto annexed and made a part of this report. Finally, that all the fees, charges, and expenses of them, the said arbitrators, and of all the surveyors and other persons by them employed in the discharge of their said duties, have been paid and discharged by the said Ogden & Fellows. In witness of all which, they, the said arbitrators, have set their hands and seals hereunto in duplicate, one of them to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows. Done at the city of Buffalo, in the State of New York, the twenty-sixth day of March, one thousand eight hundred and forty-four.

THOMAS C. LOVE, [SEAL.]
IRA COOK. [SEAL.]

Sealed and delivered in presence of—
WM. YOUNG, Jr.,
CHARLES L. MAYER.

STATE OF NEW YORK,
Erie County, ss.

I hereby certify that on this 26th day of March, 1844, before me came Thomas C. Love and Ira Cook, with whom I am personally acquainted, and whom I know to be the same persons described in and who executed the foregoing instrument and the schedules thereto annexed, and they severally acknowledged that they had executed the same.

N. K. HALL,
First Judge Erie Co. Courts, and Counsellor-at-law in the Supreme Court.

Recapitulation.

	Valuation of Improvements.	Sums awarded.	
Buffalo reservation	81,567 28	43,750 60	
Tonnewanda "	28,000 00	15,018 36	
			$58,768 96, payable by Ogden & Fellows.
Cattaraugus "	42,190 25	22,629 61	
Allegany "	38,409 50	20,601 43	
			43,231 04, payable by the U. S. government.
	190,167 03		$102,000 00

Schedule N.

Doc. No. 1. No. 2178.

To THOMAS L. OGDEN and JOSEPH FELLOWS:

At sight, pay to William Selden, Treasurer of the United States, or order, for the use of the said States, seventy-five thousand dollars, being the amount awarded to be the consideration money payable to the Seneca nation of Indians as the value, exclusive of the improvements thereon, of the two tracts of land severally called the Buffalo Creek reservation and the Tonawanda reservation, in pursuance of the third article of the treaty made between the said Ogden & Fellows and the Seneca nation of Indians, dated 20th May, 1842.

And for so doing this shall be your warrant.

Given under my hand and the seal of the Treasury, this eleventh day of June, in the year of our Lord one thousand eight [L. S.] hundred and forty-four, and of independence the sixty-eighth.

Mc. C. YOUNG,
Secretary of the Treasury ad interim.

J. W. MCCULLOCK, *Comptroller.*

$75,000. R. & E. 12th. Recorded 12th. A. J. L. N. Countersigned by T. L. Smith, Register.

Deposit in the Bank of Commerce, in New York, by Thomas L. Ogden and Joseph Fellows, on account, as above stated.

April 24th, 1844. $75,000.

See letter addressed by the Secretary of War to the Secretary of the Treasury, under date June 10th, 1844, annexed hereto, and also the certificate of deposit referred to in said letter and marked No. 822.

[Endorsed:] Received 11th June, 1844.
W. SELDEN, *Tr. U. S.*

No. 822. BANK OF COMMERCE, IN NEW YORK,
April 24th, 1844.

I certify that Thomas L. Ogden and Joseph Fellows have this day deposited with this bank, to the credit of the Treasurer of the United States, seventy-five thousand dollars, in satisfaction of the amount determined and awarded to be the consideration-money payable to the Seneca nation of Indians, as the value, exclusive of the improvements thereon, of the two tracts of land severally called the Buffalo Creek reservation and the Tonawanda reservation, in pursuance of the third article of the treaty made between the said

Ogden & Fellows and the Seneca nation of Indians, dated 20th May, 1842, for which I have signed duplicate receipts.

$75,000. GEO. CURTIS, *Cas'r.*

[Endorsed across:] JAS. HANEMAN.

WAR DEPARTMENT, *June 10th*, 1844.

SIR: I have the honor to transmit, herewith, a certificate of deposit for $75,000. This deposit was made by Messrs. Ogden & Fellows on the 24th of April last in the Bank of Commerce, N. Y., to the credit of the Treasurer of the United States, and it is to be invested in stock, for the benefit of the Seneca Indians of New York, under the 3d article of the treaty of 1842. You will, therefore, please cover the amount by warrant into the Treasury, under the head of appropriation "trust fund," "Senecas, New York."

Very respectfully, your ob't serv't,

WM. WILKINS,
Secretary of War.

To the Hon. Secretary of the Treasury.

Doc. No. 2. No. 2896.

To JOSEPH FELLOWS, survivor of Thomas L. Ogden:

At sight, pay to William Selden, Treasurer of the United States, or order, for the use of the said States, fifteen thousand and eighteen dollars and thirty-six cents, for the use of the President of said United States, according to the provisions of the 5th article of the amended treaty of the 20th May, 1842, between the said Thomas L. Ogden and Joseph Fellows and the chiefs and headmen of the Seneca nation of Indians, being the sum awarded by appraisers duly appointed for Indian improvements on the Tonnewanda reservation.

And for so doing this shall be your warrant.

Given under my hand and the seal of the Treasury, this thirty-first day of March, in the year of our Lord one thousand eight hundred and forty-six, and of independence the 70th.

[L. S.]

R. J. WALKER,
Secretary of the Treasury.

J. W. MCCULLOCK, *Comptroller.*

R. & E., 7th. A. $15,018 36. Recorded. J. D. B. Countersigned by R. H. Gillett, Register.

Deposit in the Bank of Commerce, New York, March 27, 1846, $15,018 36. S. M. B.

See the certificate of deposit annexed hereto, marked A.

[Endorsed:] Received 31 March, 1846.

W. SELDEN, *Treas.*

WAR DEPARTMENT, *March 31st*, 1846.

SIR: I have the honor to transmit, herewith, a certificate of deposit for fifteen thousand eighteen dollars and thirty-six hundredths, made by Joseph Fellows, esq., on the 27th inst., in the Bank of Commerce, in New York, to the credit of the Treasurer of the United States, it being the sum awarded by appraisers duly appointed for Indian improvements on the Tonnewanda reservation, under the 5th article of the amended treaty of the 20th May, 1842, between the late Thomas L. Ogden and Joseph Fellows and the Seneca nation of Indians, residing in New York, which amount is to be paid over to the Indians entitled to the same, under the direction of the War Department.

You are therefore hereby respectfully requested to cover the amount by warrant into the Treasury under the head of appropriations "Awards for improvements surrendered" by the Senecas of New York.

Very respectfully, your ob't servant,

(Signed) W. L. MARCY,
Sect. of War.

Hon. R. J. WALKER, Sect. of the Treasury.

A. Annex. cor. wt. 2896. Bank of Commerce, in New York, No. 1372.

MARCH 27, 1846.

I certify that Joseph Fellows, survivor of Thomas L. Ogden, has this day deposited with this bank, to the credit of the Treasurer of the United States, fifteen thousand eighteen dollars and thirty-six hundredths, for the use of the President of said United States, according to the provisions of the 5th article of the amended treaty of the 20th May, 1842, between the said Thomas L. Ogden and Joseph Fellows and the chiefs and headmen of the Seneca nation of Indians, being the sum awarded by appraisers duly appointed, for Indian improvements on the Tonnewanda reservation, for which I have signed duplicate receipts.

$15,018 36. GEO. CURTIS, *Cash.*

[Endorsed across:] JAS. HANEMAN.

Supreme Court of the United States.—December Term, 1858.

THE PEOPLE OF THE STATE OF NEW YORK, ex rel.
Asa Cutler and al., Pl'ffs in er.,
vs.
EDGAR C. DIBBLE, County Judge, &c.

Mr. Gillet, of counsel for the plaintiffs in error, moved the court for leave to file a stipulation signed by the attorneys for the parties in this cause, with a portion of the record therein, and asked for